United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL

77-1465

United States Court of Appeals
For the Second Circuit

B

Ps

UNITED STATES OF AMERICA,

Appellee,

-v-

FERNANDO GALLARDO, a/k/a Frank Zayas,
MARTHA MACHADO, a/k/a Martha Vargas,
a/k/a Martha Gallardo,
CARLOS GALLARDO, a/k/a Carlos
Santiago-Bautista,
HERMINIO GUTTIERREZ, a/k/a Cuba,
DOMINGO ZAYAS, a/k/a Luis Nunez,
a/k/a Luis Machado, a/k/a Luisito,
ORLANDO MACHADO, a/k/a Julito,
WILFREDO MACHADO,
HILDA GRACIA, a/k/a Carlos Gallardo's wife,
JOSE LUIS IGLESIAS, a/k/a Chegui,
LUIS NUNEZ-RAMOS, a/k/a Indio,
CARLOS RIVERA-SANTIAGO, a/k/a Carlitos,
ANGELO ROCHE, a/k/a The Old Man,
JOSE VELASQUEZ, a/k/a Vaquero,
a/k/a Cowboy,
MOISES MALDONADO,
GILBERTO TORRES, a/k/a Little Gilbert,
FABIAN RODRIGUEZ, LUIS RODRIGUEZ,
JOSE LUIS TERSON, a/k/a The Old Man,
VICTOR MEDINA, a/k/a Vitin,
ANTONIO MORALIES, a/k/a Tony the Mechanic,
RICARDO GARCIA,
ANTHONY RODRIGUEZ, a/k/a Little Tony,
and JOHN DOE, a/k/a Pumarejo,

Defendants-Appellants.

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
FEB 8 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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TABLE OF CONTENTS

Page

Docket Entries 1a

Indictment 30a

Endorsements On Indictment 48a

Summations of Counsel 61a

Government's Sentencing Memorandum 474a

Requests to Charge 496a

Charge to Jury 502a

Transcript of September 19, 1977, Sentencing of Domingo Zayas, Luis Nunez-Ramos, Carlos Rivera-Santiago, Jose Velasquez, Fabian Rodriguez, Antonio Morales, Anthony Rodriguez 610a

Transcript of September 23, 1977, Sentencing of Angelo Roche 663a

Medical Records of Anthony Rodriguez (Def. Ex. B) 675a

Letter to Trial Court on Behalf of Defendant Orlando Machado 700a

0208 1 0866

MORAL[illegible] ANTONIO,
a/k/a Tony the Mechanic

(LAST, FIRST, MIDDLE)

0214 77 0100 2

24

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, I.	15

9/26

SUPERSEDING COUNTS

RELEASE

☐ Fugitive
☐ Pers. Recog.
☐ PSA
S
CONDITIONS
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Prty Cust
☐ Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began:
Summons Served:
First Appearance:
High Risk Date:
Indict. Waived ☐
In Charging District

INDICTMENT ☒ Information ☐ 2-14-77
Superseding ☐ Indict/Info ☐

ARRAIGNMENT
1st Plea 3-10-77 ☒ NG ☐ G ☐ NOL
G. Plea W/Drawn
Final Plea ☐ NG ☐ G ☐ NOL

TRIAL
Trial Set For:
Voir Dire ☐
Trial Began 5-23-77 ☒ ☐
Trial Ended 7-1-77

Disposition of Charges 7-1-77
☐ Convicted
☐ Acquitted
☐ Dismissed
☐ WOP ☐ W
☐ On Government's Motion

SENTENCE 9-15-77
☐ On All Charges
☐ On Lesser Offense(s)

MAGISTRATE

	DATE	INITIAL/NO		INITIAL/NO	OUTCOME
Search Warrant Issued / Return			INITIAL APPEARANCE DATE ▶		DISMISSED
Summons Issued / Served			PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled ▶ / Date Held ▶		HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued			☐ WAIVED ☐ NOT WAIVED	Tape Number	HELD FOR PRO- IN OTHER DISTRICT
COMPLAINT ▶			☐ INTERVENING INDICTMENT		
OFFENSE					

ATTORNEYS

U.S. Attorney or Asst.

James A. Moss
791-0069
244

Gallardo, et al.

DATE	PROCEEDINGS	EXCLUDABLE DELAY		
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.			
3-3-77	Indictment Ordered unsealed........Frankel, J.			
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.			
3-15-77	Filed AFFIDAVIT of James a. Moss, for a Writ of Habeas Corpus Ad Prose. RET: 3-22-77.			
4-5-77	Deft (no atty) produced in court on writ. Pre-trial Conference held. Broderick, J.	3	4-5-77	E
4-6-77	Deft - Inter. Samuel Alfonso (no atty) Pre-trial Conf. Held. Broderick, J.	3	4-6-77	E
4-11-77	Pre-trial Conference Held. Deft w/a/p Michael Stokamer. Pleads not guilty. thru interpreter Richard Schoen, Deft produced on a writ. Broderick, J.	3	4-11-77	E
4-14-77	Filed CJA 23 Financial Affidavit.			

FORM AO-256

Cont'd on page 2

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

DATE	IV PROCEEDINGS (continued) PAGE TWO DOCUMENT NO.	V EXCLUDABLE DELAY (a)	(b)	(c)	(d)
4-29-77	Pre-trial Conference held.	3	4-29	E	1
5-18-77	Pre-Trial Confrence Held. Attys & interpreter's present.... Broderick,J.	3	5-18.	E	1
5-27-77	Filed Requests to Charge on behalf of the Deft.				
5-27-77	Filed Govt's Trial Memorandum.				
5-27-77	Filed Govt's Requests to Charge.				
5-23-77	Trial begun with a jury. (atty pres.) Jury selection.				
5-24-77	Trial cont'd. Jury selection cont'd.				
5-25-77	Trial cont'd. Jury selection cont'd and concluded.				
5'26'77	Trial cont'd.				
5-31-77	" "				
6-1-77	Trial cont'd. Hearing held on deft's motion for a mistrial. Decision Reserved.				
6-2-77	Trial cont'd as to this deft.				
6-3-77	Filed [illegible] dated 4-29-77				
6-3-77	/Filed Memorandum on behalf of deft.				
6-6-77	Filed ORDER authorizing the appointment of three interpreters daily for the deft. BRODERICK, J.				
6-6-77	Trial Cont'd.				
6-7-77	" "				
6-8-77	" "				
6-9-77	" "				
6-16-77	Filed CJA 21 Authorization & voucher for an interpreter. Copies 2 & 5.				
6-16-77	Filed CJA 21 Authorization * voucher for an interpreter. Copies 2 & 5.				
6-16-77	Filed CJA 21 Authorization& voucher for an interpreter. Copies 2 & 5.				
6-16-77	Filed CJA 21 Authorization & voucher for an interpreter. Copies 2 &5.				
6-16-77	Filed CJA 21 Authorization & voucher for an interpreter. Copies 2 & 5.				
6-16-77	Filed CJA 21 Authorization & voucher for an interpreter. Copies 2 &5.				
6-13-77	Trial adj'd to 6-14-77. Juror #7 excused and a alternate juror is excused.				
6-14-77	Trial cont'd.				
6-15-77	" "				
6-16-77	" "				
6-21-77	" "				
6-22-77	" " all parties rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment. Decision reserved.				
6-24-77	Filed CJA 21 Authorization & voucher for an interpreter,Copies 2&5.				
6-24-77	Filed CJA 21 Authorization & voucher for an interpreter, copies 2&5.				
6-24-77	Filed CJA 21 Authorization & voucher for an interpreter, copies 2&5.				
6-28-77	Filed Govt's Request to charge (SUPPLEMENTAL)				
6-27-77	Trial cont'd. Deft's motion for a directed verdict of acquittal and to dismiss the indictment - DENIED.				
6-28-77	Deft's summation, Govt's rebuttal summation.				
6-29-77	Court charges the jury, Jury deliberating.				
6-30-77	Jury deliberations cont'd.				
7-1-77	Jury deliberationd cont'd. Jury finds the deft GUILTY on each of cts. 1 & 15. Deft remanded in lieu on bail, BRODERICK, J.				

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

2A

E	PROCEEDINGS
8-77	Filed Deft's Supplemental Request to charge on behalf of the deft.
7-11-77	Bench Warrant vacated. BRODERICK, J.
7-19-77	Filed transcript of record of proceedings, dated June 26,28 - 1977
7-19-77	Filed transcript of record of proceedings, dated June 9,13,14,15,16 - 1977
7-19-77	Filed transcript of record of proceedings, dated June 29-30 July 1-1977
7-19-77	Filed transcript of record of proceedings, dated June 21-22, 27-28 - 1977
9-19-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is committed to the custody of the atty gen for impr for a period of FIFTEEN (15) YEARS on each of counts 1 & 15 to run concurrently with each other. PURSUANT TO the provisions of Sec. 841 of Title 21, U.S. Code the deft is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confine- BRODERICK, J. (all copies issued)
9-26-77	Filed Deft's NOTICE OF APPEAL to the USCA from the order of 9-19-77. Mailed Notices to the U.S. Atty and the counsel for the appellant.

3A

TRUE COPY
YMOND B. BURGHARDT, Clerk
By B. Deputy Clerk

0208 1 0866 | MORALES, ANTONIO,
a/k/a Tony the Mechanic

LAST, FIRST MIDDLE

☐ JUVENILE

No. of Defts 24

0214 | 77 | 0100

Yr. | Docket No. | Def.

U.S. MAG CASE NO. ▶

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, I.	15

9/26

SUPERSEDING COUNTS

BAIL • RELEASE

☐ Denied AMT Set ☐ Fugitive ☐ Pers. Recog ☐ PSA

$ ______ 000

Date

conditions

☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Prty Cust
☐ Other

☐ Bail Not Made

☐ Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began

Summons Served

First Appearance

High Risk Date

Indict. Waived ☐

In Charging District

INDICTMENT ☒ Information ☐

2-14-77

Superseding ☐ Indict/Info ☐

ARRAIGNMENT

1st Plea 3-10-77

Final Plea

☒ NG ☐ G ☐ NOL

G. Plea W/Drawn

☐ NG ☐ G ☐ NOL

TRIAL

Trial Set For

Voir Dire ☐

Trial Began 5-23-77 ☒ J N ☐ J

Trial Ended 7-1-77

Disposition of Charges 7-1-77

☐ Convicted
☐ Acquitted
☐ Dismissed
☐ On Governm't Motion

☐ WOP ☐ WP

SENTENCE

9-15-77

☐ On All Charges
☐ On Lesser Offense(s)

MAGISTRATE

DATE | INITIAL/NO.

INITIAL APPEARANCE DATE ▶

PRELIMINARY EXAMINATION OR REMOVAL HEARING

WAIVED

INITIAL/NO.

OUTCOME

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

HELD FOR GJ OR OTHER PROCEEDING IN

ATTORNEYS

U.S. ATTORNEY OR ASST.

James A. Moss
791-0069
244

Gallardo, et al.

DATE	PROCEEDINGS	EXCLUDABLE DELAY (a)	(b)
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.		
3-3-77	Indictment Ordered unsealed.......Frankel, J.		
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.		
3-15-77	Filed AFFIDAVIT of James a. Moss, for a Writ of Habeas Corpus Ad Prose. RET: 3-22-77.		
4-6-77	Deft (no atty) produced in court on writ. Pre-trial Conference held. Broderick, J.	3	4-5-77
4-6-77	Deft - Inter. Samuel Alfonso (no atty) Pre-trial Conf. Held. Broderick, J.	3	4-6-77
4-11-77	Pre-trial Conference Held. Deft w/a/p Michael Stokamer. Pleads not guilty. thru interpreter Richard Schoen, Deft produced on a writ. Broderick, J.	3	4-11-77
4-14-77	Filed CJA 23 Financial Affidavit.		

FORM AO 256

Cont'd on page 2

[illegible] OPPOSITE THE APPLICABLE [illegible] IN SECTION V ANY OCCURENCE OF EXCLUDABLE DELAY PER [illegible] USC § 3161(h)

PAGE TWO

DATE	IV PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
		3	4-29	E	1
4-29-77	Pre-trial Conference held.	3	5-18.	E	1
5-18-77	Pre-Trial Conference Held. Attys & interpreter's present...				
	Broderick,J.				
5-27-77	Filed Requests to Charge on behalf of the Deft.				
5-27-77	Filed Govt's Trial Memorandum.				
5-27-77	Filed Govt's Requests to Charge.				
5-23-77	Trial begun with a jury. (atty pres.) Jury selection.				
5-24-77	Trial cont'd. Jury selection cont'd.				
5-25-77	Trial cont'd. Jury selection cont'd and concluded.				
5'26'77	Trial cont'd.				
5-31-77	" "				
6-1-77	Trial cont'd. Hearing held on deft's motion for a mistrial.				
	Decision Reserved.				
6-2-77	Trial cont'd as to this deft.				
6-3-77	[illegible] dated 6-29-77				
6-3-77	/Filed Memorandum on behalf of deft.				
6-6-77	Filed ORDER authorizing the appointment of three interpreters daily for the deft. BRODERICK, J.				
6-6-77	Trial Cont'd.				
6-7-77	" "				
6-8-77	" "				
6-9-77	" "				
6-16-77	Filed CJA 21 Authorization & voucher for an interpreter. Copies 2 & 5.				
6-16-77	Filed CJA 21 Authorization * voucher for an interpreter. Copies 2 & 5.				
6-16-77	Filed CJA 21 Authorization& voucher for an interpreter. Copies 2 &5.				
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6-16-77	Filed CJA 21 Authorization & voucher for an interpreter. Copies 2 & 5.				
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6-14-77	Trial cont'd.				
6-15-77	" "				
6-16-77	" "				
6-21-77	" "				
6-22-77	" " all parties rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment. Decision reserved.				
6-24-77	Filed CJA 21 Authorization & voucher for an interproter,Copies 2&5.				
-24-77	Filed CJA 21 Authorization & voucher for an interpreter, copies 2&5.				
-24-77	Filed CJA 21 Authorization & voucher for an interpreter, copies 2&5.				
-2[illegible]-77	Filed Govt's Request to charge (SUPPLEMENTAL)				
-2[illegible]-77	Trial cont'd. Deft's motion for a directed verdict of acquittal and to dismiss the indictment - DENIED.				
	Deft's summation, Govt's rebuttal summation.				
-28-77	Court charges the jury, Jury deliberating.				
-29-77	Jury deliberations cont'd.				
-30-77	Jury deliberations cont'd. Jury finds the deft GUILTY on each				
7-1-77	of cts [illegible] & 15, Deft remanded in lieu on bail, BRODERICK, J.				

DATE	RECEIPT NUMBER	C.D NUMBER
5A		

B

USA -VS- [illegible]S, ANTONIO

PROCEEDINGS

Filed Deft's Supplemental Request to charge on behalf of the deft.

Bench Warrant vacated. BRODERICK, J.

Filed transcript of record of proceedings, dated June 2,6,2,8 - 1977

-7 Filed transcript of record of proceedings, dated June 9,13,14,15,16 - 1977

77 Filed transcript of record of proceedings, dated June 29-30 July 1 - 1977

[illegible]77 Filed transcript of record of proceedings, dated June 21-22, 27-28 - 1977

[illegible]77 Filed transcript of record of proceedings, dated

-19-77 Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is committed to the custody of the atty gen for impr for a period of FIFTEEN (15) YEARS on each of counts 1 & 15 to run concurrently with each other.
PURSUANT TO the provisions of Sec. 841 of Title 21, U.S. Code the deft is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinemer
BRODERICK, J. (all copies issued)

-26-77 Filed Deft's NOTICE OF APPEAL to the USCA from the order of 9-19-77.
Mailed Notices to the U.S. Atty and the counsel for the appellant.

D. C. [illegible] Criminal Continuation Sheet

A TRUE COPY
[illegible]ND E. BURGHARDT, Clerk

0208 1 0865 NUNEZ-RAMOS, LUIS,
a/k/a Indio

LAST, FIRST, (MIDDLE)

JUVENILE 02 14 77 0100 24

CASE NO.

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin	2

9/19

SUPERSEDING COUNTS

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began — Summons Served — First Appearance

High Risk Date

INDICTMENT Information ☐ 2-14-77

Indict. Waived ☐

Superseding ☐ Indict/Info ☐

In Charging District

ARRAIGNMENT 1st Plea 3-10-77

Final Plea

Trial Set For

TRIAL Jury ☐ N

Trial Began ☐

Trial Ended

Disposition of Charges

☐ Convicted

☐ Acquitted

☐ Dismissed

MAGISTRATE

Search Warrant — Issued — Return

Summons — Issued — Served

Arrest Warrant Issued

DATE — INITIAL/NO.

INITIAL APPEARANCE DATE ▶

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled — Date Held

☐ WAIVED ☐ NOT WAIVED

☐ INTERVENING INDICTMENT

Tape Number

OFFENSE In Complaint

U.S. Attorney or Asst.

ATTORNEYS Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None ☐ Other ☐ PD

James A. Moss
791-0069

244

Show last names and suffix numbers of other defendants on same indictment/information

Gallardo, et al.

DATE	PROCEEDINGS
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.
3-3-77	Indictment Ordered unsealed........Frankel, J.
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.
3-22-77	Filed papers rec'd from U.S. Mag. of Puerto Rico: copy of the docket, warrant of removal on indictment, recording log, removal proceedings, report of proceedings before U.S. Mag., CJA 20, CJA 23, Warrant of arrest, and copy of indictment.
3-31-77	Filed AFFIDAVIT of James A. Moss for Writ of H/C Ad Prose. of Luis Nunez-Ramos. RET: 4-8-77.
4-11-77	Pre-trial Conf. held. Deft w/a/p Theodore Krieger pleads. Not Guilty. Deft produced on a writ.
4-14-77	Filed CJA 23 Financial Affidavit.

3 4/11

Cont'd on page 2

7A

[illegible]	Pre-trial conference held.
-27-77	Filed Govt's Trial Memorandum.
-27-77	Filed Govt's Requests to Charge.
-77	Trial begun with a jury. (atty Pres) Jury Selection.
-77	" cont'd. jury selection cont'd.
-77	" " . Jury selection cont'd and concluded.
-77	" "
-77	" "
-77	" "
-77	" "
[illegible]	Filed transcript of record of proceedings, dated 6-29-77
-77	Trial Cont'd
-77	" "
-77	" "
-9-77	" "
6-13-77	" adj'd to 6-14-77. Juror #7 excused and a alternate juror is excused.
6-1-77	Trial Cont'd.
6-15-77	" "
6-16-77	" "
6-21-77	" " Govt Rests.
6-28-77	Fld. Govt's Supplemental Request to Charge.
6-27-77	Trial cont'd. All motions for a directed verdict of acquittal and to dismiss the indictment -DENIED. Deft's summation.
6-28-77	Govt's rebuttal summation.
6-29-77	Court charges the jury. Jury deliberating.
6-30-77	Jury deliberations cont'd.
7-77	Jury deliberations cont'd. Jury finds the deft., GUILTY oneach of counts 17 & 18. Sentence Sept, 19-77 Pre-sentence investigations ordered. Deft'cont'd remamded in lieu of bail. BRODERICK, J.
7-19-77	Filed transcript of record of proceedings, dated June 6,7,8, 1977
7-19-77	Filed transcript of record of proceedings, dated June 9,13,14,15,16 1977
7-19-77	Filed transcript of record of proceedings, dated June 29,30, July 1, 1977
7-19-77	Filed transcript of record of proceedings, dated June 21,22,27,28, 1977
-7-77	Filed Deft's NOTICE OF MOTION for an order setting aside the verdict rendered, as being contrary to the law and against the weight of the evidence. AFFIRMATION of Theodore Krieger attached.
-7-77	Filed Deft's MEMORANDUM OF LAW re: The prosecutorial summation was violative of due procedd in its expressed belief as to the deft's culpability.
-6-77	Filed MEMO ENDORSED on deft's letter to Judge Broderick dated 9-9-77 with the Affidavit of JOSE LUIS IGLESIAS, in support of the Motion of 9-7-77. The request to withdraw this application is granted. BRODERICK, J. m/n.
-14-77	Filed Govt's MEMORANDUN OF LAW in opposition to deft's post-conviction motions to set aside the verdict.

Cont on pg 3

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. ______ PAGE ____ OF ____ PAGE

DATE	NR.	PROCEEDINGS
9-16-77		Filed Gov.'s memorandum of law in oppostion to Deft's post conviction motions to set aside the verdict.
9-19-77		Filed Deft's NOTICE OF APPEAL to the USCA for the Judgment of 9-19-77. Mailed Notices to the U.S. Atty and the Counsel of the Appellant.
9-20-77		Filed MEMO ENDORSED on deft's motion of 9-7-77. MOTION DENIED, BRODERICK, J. m/n
9-19-77		Filed JUDGMENT AND PROBATION /COMMITMENT ORDER - the deft is hereby committed to the custody of the Atty Gen for impr. for a period of FIFTEEN (15) YEARS, on each of counts 1,7 &8, to run concurrently with each other, and to run concurrently with the sentence the deft is currently serving in Puerto Rico imposed on 2-11-7 from the date of the writ 4-11-77. Pursuant to the provisions of Sec. 841 of Title 21, U.S.C. the deft is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinement. BRODERICK, J. (all copies issued).
9-29-77		Filed CJA 20 Appointment & voucher for counseling services. Copies 2 & 5.
[illegible]		Filed comm[illegible] & entered [illegible], [illegible] delivered to MCC - 9-19-77

A TRUE COPY
RAYMOND E. BURGHARDT, Clerk
By B. [illegible]
Deputy Clerk

9A

CRIMINAL DOCKET, U.S. District Court

PETTY OFFENSE Po ☐
OTHER MINOR OFFENSE Mo ☐
OTHER MISDEMEANOR Mo ☐
FELONY Fel ☒

JUDGE/MAGISTRATE: Assigned: 0208 1 0866 Docket / Office / Disp./Sentence

U.S. v. RIVERA-SANTIAGO, CARLOS
a/k/a Carlitos
(LAST, FIRST, MIDDLE)

☐ JUVENILE

Case Filed Mo. Day: 02 14
No. of Def's: 24

77 0100 11
Yr. / Docket No. / Def

U.S. MAG. CASE NO. ▶

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, I.	18

1017

SUPERSEDING COUNTS

BAIL • RELEASE
☐ Denied · AMT Set $ 000 · Date
☐ Fugitive ☐ Pers. Recog. ☐ PSA
conditions: ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Prty Cust ☐ Other
☐ Bail Not Made
☐ Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began:
Summons Served:
First Appearance: —.

High Risk Date:

INDICTMENT ☒ Information ☐: 2-14-77
Indict. Waived ☐
In Charging District
Superseding ☐ Indict/Info ☐

ARRAIGNMENT
1st Plea: 3-10-77 ☒ NG ☐ G ☐ NOL
Final Plea: [illegible] ☐ NG ☐ G ☐ NOL
G. Plea W/Drawn

TRIAL
Trial Set For:
Voir Dire ☐
Trial Began: 5-23-77 ☐
Trial Ended: 7-1-77

SENTENCE
Disposition of Charges: 7-1-77
☐ Convicted ☐ On All Charges
☐ Acquitted ☐ On Lesser Offense(s)
☐ Dismissed. ☐ WOP. ☐ WP.
☐ On Governm't Motion

MAGISTRATE

		DATE	INITIAL/NO.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant Issued			
COMPLAINT ▶			
OFFENSE (In Complaint)			

INITIAL APPEARANCE DATE ▶
PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING: Date Scheduled ▶ / Date Held ▶
☐ WAIVED ☐ NOT WAIVED
☐ INTERVENING INDICTMENT
Tape Number
INITIAL/NO.

OUTCOME:
☐ DISMISSED
☐ OTHER PROCEEDINGS IN DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.
James A. Moss
791-0069
244

ATTORNEYS Defense: ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

* Show last names and suffix numbers of other defendants on same indictment/information.

Gallardo, et al.

DATE	(DOCUMENT NO.) PROCEEDINGS
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.
3-3-77	Indictment Ordered unsealed........Frankel, J.
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.
3-22-77	Filed Papers rec'd from the U.S. Mag's of Puerto Rico: copy of dockets, Warrant of removal on indictment, recording log, minutes of proceeding, removal proceedings, motion for deduction of bail, copy of CJA 20, report of proceedings before Mag. ,
3-28-77	Deft. (atty pres. Theodore Krieger) assigned counsel. Deft. pleads not guilty. Bail fixed in the amount of $25,000. cash or surety. Deft cont'd remanded in lieu of bail.. So ordered BRODERICK, J.
3-31-77	REMAND ISSUED.

EXCLUDABLE DELAY (a) (b) (c) (d)

FORM AO-256

CON'T ON PAGE #2.

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

IV. PROCEEDINGS (continued) PAGE TWO

DATE	(DOCUMENT NO.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
4-4-77	Deft. Carlos Rivera-Santiago (in custody) present w/atty. Hugh Cunniffe (for this bail hearing only), & AUSA James Moss Deft. is ~~released~~ from jail on $25,000 cash/surety bail w/ the following conditions: 1. deft. be in custody of his uncle, Victor Burgos. 2. deft. to report to U.S. Marshal when in the S.D.N.Y on a daily basis & report to U.S. Marshal when in District of Puerto Rico on a daily basis. On wk.ends or holidays, deft. is to make arrangements w/ Marshals so that he may advise local police of his whereabouts. 3. Bail limits to include: S.D. of N.Y. E.D. of N.Y. & District of Puerto Rico...Broderick, J.				
4-5-77	Filed APPEARANCE BOND for $25,000.00	3	4-29	E	1
4-29-77	Pre-trial conference held.				
5-27-77	Filed Govt's Trial Memorandum.				
5-27-77	Filed Govt's Requests to Charge.				
5-31-77	Filed transcript of record of proceedings, dated 4-4-77				
5-23-77	Trial begun with a jury. (atty pres) Jury selection.				
5-24-77	Trial cont'd. Jury selection cont'd.				
5-25-77	Trial cont'd. Jury selection cont'd & concluded.				
5-26-77	Trial cont'd.				
5-31-77	" "				
6-1-77	" "				
6-2-77	" "				
6-3-77	Filed transcript of record of proceedings, dated 4-29-77				
6-6-77	Trial cont'd.				
6-7-77	" "				
6-8-77	" "				
6-9-77	" "				
6-13-77	Trial adj'd to 6-14-77. Juror #7 excused and a alternate juror is excused.				
6-14-77	Trial Cont'd				
6-15-77	" "				
6-16-77	" "				
6-21-77	" "				
6-22-77	" " all parties rest. Deft's motions for a directed verdict acquittal and to dismiss the indictment, DECISION RESERVED.				
[illegible]-77	Filed Govt's Supplemental Request to Charge.				
6-27-77	Trial cont'd. Deft's motion for a directed verdict of acquittal and to dismiss the indictment - Denied. Deft summations, Govt rebuttal summation.				
6-28-77	after court charges jury.				
6-29-77	Jury deliberations cont'd,				
6-30-77	Jury deliberations cont'd.				

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	RECEIPT NUMBER	C.D. NUMBER

CONT'D on page 3

USA -vs_ RIVERA-SANTIAGO, CARLOS

77CR 100-d11

DATE	PROCEEDINGS
7-1-77	Jury deliberations cont'd. Jury finds the deft GUILTY on each of counts, 1 & 18. Deft cont'd on bail. BRODERICK, J.
7-19-77	Filed transcript of record of proceedings, dated June 2, 6, 7, 8, 1977
7-19-77	Filed transcript of record of proceedings, dated June 9, 13, 14, 15, 16 1977
7-19-77	Filed transcript of record of proceedings, dated June 29, 30, July 1, 1977
7-19-77	Filed transcript of record of proceedings, dated June 21, 22, 27, 28, 1977
10-5-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is hereby committed to the custody of the Atty Gen for impr for a period of, for the maximum period, oneach of counts 1 & 18, authorized by law and for a study as described in 18 U.S.C. Section 4205 (d) the results of such study to be furnished this Court within THREE (3) MONTHS unless the court grants further time not to exceed THREE (3) MONTHS, whereupon the deft shall be returned to this court, and the sentence of impr hereby imposed shall be subject to modification in accordance with U.S.C. Sec. 4205 (c). Pursuant to the provisions of Sec 841 of Title 21, U.S.C. the deft is placed on Special Parole for a period of THREE (3) YEARS to commence upon the expiration of confinement. Deft to surrender on 10-20-77., at 4:45 PM in room 128. BRODERICK, J. (all copies Issued
10-17-77	Filed Notice of Appeal to the U.S.C.A. for the 2nd Circuit from a judgement entered on 10-5-77. (mailed notices to U.S. Atty. Counsel for Appellant).

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By Deputy Clerk

12A

D. C. 10? (Crim.) 1 Continuation Sheet

1 366 a/k/a 02 14 77 0100 12

24

OFFENSES CHARGED

21:846	Consp. to violate Federal [illegible]	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, [illegible]	

9/23

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT ☒	ARRAIGNMENT		TRIAL		SENTENCE
U.S. Custody Began	High Risk Date	Information ☐ 2-14-77	1st Plea 3-10-77	Trial Set for	Voir Dire	Disposition of Charges 7-1-77	9-23-77
Summons Served	Indict. Waived ☐		☒ NG ☐ G ☐ NOL	Trial Began 5-23-77 ☐ J ☐ N	☑ Convicted	☒ On All Charges
First Appearance	In Charging District	Superseding ☐ Indict/Info ☐	Final Plea	☐ G Plea W/Drawn	☐ Acquitted	☐ On Lesser Offense(s)
			☐ NG ☐ G ☐ NOL	Trial Ended 7-1-77	☐ Dismissed	☐ WOP ☐
						☐ On Government's Motion

MAGISTRATE

	DATE	INITIAL NO.		INITIAL NO.	OUTCOME
Search Warrant: Issued			INITIAL APPEARANCE DATE ▶		☐ DISMISSED
Search Warrant: Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled ▶		
Summons: Issued			Date Held ▶		
Summons: Served			☐ WAIVED ☐ NOT WAIVED		
Arrest Warrant Issued			☐ INTERVENING INDICTMENT		
COMPLAINT ▶					
OFFENSE (In Complaint)					

U.S. Attorney or Asst.

James A. Moss
791-0069
244

ATTORNEYS

TEODORE MENDEZ LEBRON
Cond. San Alberto of. 302-303
Ave, Condado 605, Pda. 17
Santurce, Puerto Rico 00907

* Show last names and suffix numbers of other defendants on same indictment/information

Gallardo, et al.

DATE	(DOCUMENT NO.) PROCEEDINGS
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.
3-3-77	Indictment Ordered unsealed........Frankel, J.
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, Jj.
3-23-77	Deft. (atty Pres.) Theodoro Mendez, pleads not guilty, released on $75,000 surety and $25,000 cash bail. Bail limits to include Puerto Rico and to report to U.S. Marshal every day. So ordered Broderick, J.
3-24-77	Filed MOTION for leave to appear pro hac vice. Motion granted so ordered BRODERICK, J. m/n
3-28-77	Filed Papers rec'd from Puerto Rico, copy of Docket sheet, warrant for removal of the indictment, order spedifying methods and conditions of release, Appearence bond, removal proceedings, motion to review and reduce bail conditions, motion to review bail conditions and copy of the indictment.

FORM AO-256

Cont'd on page 2

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V ANY OCCURRENCES [illegible]

DATE	IV. PROCEEDINGS (continued) PAGE TWO (DOCUMENT NO.)	V. EXCLUDABLE DELAY (a)	(b)	(c)
-15-77	Filed Papers rec'd from the District of Puerto Rico : Copy of Docket Sheets, Motion asking modification of bail conditions and Warrant of removal on indictment.	3	4-29-77	E
4-29-77	Pre-trial Conference held.			
5-27-77	File dTrial Memorandum by govt.			
5-27-77	Filed Govt's Requests to Charge.			
5-23-77	Trial begun with a jury. (atty Pres) Jury selection.			
5-24-77	Trial cont'd. Jury selection cont'd/			
5-25-77	Trial cont'd. Jury selection cont'd and concluded.			
5-26-77	Trial cont'd.			
5-31-77	" "			
6-1-77	" "			
6-2-77	" "			
6-3-77	Filed transcript of record of proceedings, dated 4-29-77			
6-6-77	Trial Cont'd.			
6-7-77	" "			
6-8-77	" "			
6-9-77	" "			
6-13-77	Trial adj'd to 6-14-77. Juror # 7, excused and a alternate juror is excused.			
6-14-77	Trial cont'd.			
6-15-77	" "			
6-16-77	" "			
6-21-77	" "			
6-22-77	" " all parties rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment. Decision Reserved.			
6-27-77	Trial cont'd deft;s motion for a directed verdict of acquittal and to dismiss the indictment - DENIED.			
6-28-77	Deft's summation. Govt's rebuttal summation.			
6-29-77	Court charges the jury, Jury deliberating.			
6-30-77	Jury deliberations cont'd.			
7-1-77	Jury deliberations cont'd. Jury finds the deft GUILTY on each of counts 1,4&8. Deft is to cont'd on bail. BRODERICK, J.			
7-19-77	Filed transcript of record of proceedings, dated June, 2,6,7,8 1977			
7-19-77	Filed transcript of record of proceedings, dated June 9,13,14,15,16 1977			
7-19-77	Filed transcript of record of proceedings, dated June 29,30, July 1, 1977			
7-19-77	Filed [illegible] dated June 21,22,27,28, 1977			
9-23-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is hereby committed to the custody of the Atty Gen for impr. for period of FIFTEEN (15) YEARS on each of counts, 1, 4 and 8, to run concurrently with each other. Pursuant to the provisionof Sec. 841, Title 21 U.S.C. the deft is placed on Special Parole for a period of FIFTEEN (15) YEARS, to commence upon expiration of confinement. BRODERICK, J. (all copies issued).			

Cont'd on page 2

RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D.	DATE	RECEIPT NUMBER	C.D. NUMBER

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V ANY OCCURRENCE OF [illegible]

DATE	IV. PROCEEDINGS (continued) PAGE TWO DOCUMENT NO.	V	
-15-77	Filed Papers rec'd from the District of Puerto Rico : Copy of Docket Sheets, Motion asking modification of bail conditions and Warrant of removal on indictment.	3	4-29-77
4-29-77	Pre-trial Conference held.		
5-27-77	File dTrial Memorandum by govt.		
5-27-77	Filed Govt's Requests to Charge.		
5-23-77	Trial begun with a jury. (atty Pres) Jury selection.		
5-24-77	Trial cont'd. Jury selection cont'd/		
5-25-77	Trial cont'd. Jury selection cont'd and concluded.		
5-26-77	Trial cont'd.		
5-31-77	" "		
6-1-77	" "		
6-2-77	" "		
6-3-77	Filed transcript of record of proceedings, dated 4-29-77		
6-6-77	Trial Cont'd.		
6-7-77	" "		
6-8-77	" "		
6-9-77	" "		
6-13-77	Trial adj'd to 6-14-77. Juror # 7, excused and a alternate juror is excused.		
6-14-77	Trial cont'd.		
6-15-77	" "		
6-1[illegible]	" "		
6-21-77	" "		
6-22-77	" " all parties rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment. Decision Reserved.		
6-27-77	Trial cont'd deft;s motion for a directed verdict of acquittal and to dismiss the indictment - DENIED.		
6-28-77	Deft's summation. Govt's rebuttal summation.		
6-29-77	Court charges the jury, Jury deliberating.		
6-30-77	Jury deliberations cont'd.		
7-1-77	Jury deliberations cont'd. Jury finds the deft GUILTY on each of counts 1,4&8. Deft is to cont'd on bail. BRODERICK, J.		
7-19-77	Filed transcript of record of proceedings, dated June, 2,6,7,8 1977		
7-19-77	Filed transcript of record of proceedings, dated June 9,13,14,15,16 1977		
7-19-77	Filed transcript of record of proceedings, dated June 29,30, July 1, 1977		
7-19-77	Filed [illegible], dated June 21,22,27,28, 1977		
9-23-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is hereby committed to the custody of the Atty Gen for impr. for period of FIFTEEN (15) YEARS on each of counts, 1, 4 and 8, to run concurrently with each other. Pursuant to the provisionof Sec. 841, Title 21 U.S.C. the deft is placed on Special Parole for a period of FIFTEEN (15) YEARS, to commence upon expiration of confinement. BRODERICK, J. (all copies issued).		

Cont'd on page 2

RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs ANGELO ROCHE

77 0100
Yr. Docket No.

DATE	PROCEEDINGS (continued) (Document No.)
9-23-77	Filed Deft's NOTICE OF APPEAL to the U.S.C.A. from the order filed 9-23-77. Mailed Notices to the U.S. Atty and the counsel for the Appellant.
9-28-77	Filed [illegible] entered [illegible] delivered to 9-23-77 [illegible]
9-29-77	Filed REMAND dated 9-26-77.

V. EXCLUDABLE DELA
(a) (b) (c)

A TRUE COPY
RAYMOND E. BURGHARDT, Clerk

By
Deputy Clerk

AO 256A

Interval (per Section II)
Start Date
End Date
Ltr.
Tot.

0208 1 0866 RODRIGUEZ [illegible]
a/k/a L[illegible]

02 14 77 0:00 2
24

OFFENSES CHARGED

U.S. TITLE/SECTION		
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, I.	47

956.

BAIL • RELEASE

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began: 3-3-77

Summons Served

First Appearance

High Risk Date

INDICTMENT ☒ Information ☐ 2-14-77

Indict. Waived ☐

In Charging District

Superseding ☐ Indict/Info ☐

ARRAIGNMENT

1st Plea 3-10-77

Final Plea

Trial Set For

☒ NG ☐ G ☐ NOL

G Plea W/Drawn

☐ NG ☐ G ☐ NOL

TRIAL

Voir Dire ☐

Trial Began 5-23-77 ☐ J ☐ N J

Trial Ended 7-1-77

Disposition of Charges 7-1-77

☐ Convicted

☐ Acquitted

☐ Dismissed

☐ On All Ch[illegible]

☐ On Lesser Offense(s)

☐ WOP

☐ On Government's Motion

SENTENCE

MAGISTRATE

		DATE	INITIAL NO.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant Issued on Complaint			
Offense (In Complaint)			

INITIAL APPEARANCE DATE

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled; Date Held

☐ WAIVED ☐ NOT WAIVED

☐ INTERVENING INDICTMENT

Tape Number

☐ DISMISSED

☐ HELD FOR G J OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR [illegible] OR OTHER PROCEEDINGS IN DISTRICT BELOW

ATTORNEYS

U.S. Attorney or Asst.

James A. Moss
791-0069

244

* Show last names and suffix numbers of other defendants on same indictment/information

Gallardo, et al.

PROCEEDINGS

EXCLUDABLE DELAY (a) (b) (c)

DATE	DOCUMENT NO.		
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.		
3-3-77	Indictment Ordered unsealed........Frankel, J.		
3-10-77	Deft. (no counsel present) Court directs a not guilty plea be entered. Deft. continued remanded in lieu of bail fixed at $75,000 cash or surety. Case assigned to Broderick, J. for all purposes........Bryan, J. (Interpreter Norma Seltzer present).		
3-11-77	Filed Warrant of Arrest. Exe. 3-3-77.		
3-14-77	Filed papers rec'd from the U.S. Mag's Office: Order appointing counsel and Mag's Docket Sheet.		
3-14-77	Pre-trial Conference held. Trial May 23, 1977.	3	3-14-77

Cont'd on page 2

FORM AO-256

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V ANY OCCURRENCE OF [illegible]

DATE	IV. PROCEEDINGS (continued) (DOCUMENT NO.)	V. EXCLUDABLE DELAY			
4-16-77	Applications to reduce bail by deft (atty pres). Bail reduced to $25,000. cash or surety. So ordered Broderick, J.				
3-21-77	Filed Papers rec'd from the Mag's Office: Mag's Docket Sheet, CJA 23 and CJA 20.	3	4-29-	E	1
4-29-77	Pre-trial conference held.				
5-3-77	Filed a notice of deft having been convicted on a previous indictment. 72 CR 382.				
5-27-77	Filed Govt's Requests to Charge.				
5/27/77	Filed Govt's Trial Memorandum.				
5-23-77	Trial begun with a jury. Atty Pres. Jury selection				
5-24-77	Trial cont'd. Jury selection cont'd				
5-25-77	Trial cont'd. Jury selection cont'd and concluded.				
5-26-77	Trial cont'd.				
5-31-77	" "				
6-1-77	" "				
6-2-77	" "				
6-3-77	Filed transcript of record of proceedings, dated 4-29-77				
6-6-77	Trial Cont'd				
6-7-77	" "				
6-8-77	" "				
6-9-77	" "				
6-13-77	Trial adj'd to 6-14-77. Juror #7 excused and a alternate juror is excused.				
6-14-77	Trial Cont'd.				
6-15-77	" "				
6-16-77	" "				
6-21-77	" "				
6-22-77	" " all parties rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment. Decision reserved.				
6-28-77	Filed Govt's SUPPLEMENTAL Request to charge.				
6-27-77	Trial cont'd. Deft motion for a directed verdict of acquittal and to dismiss the indictment - DENIED., Deft's summation.				
6-28-77	Govt's rebuttal summation.				
6-29-77	Court charges the jury. Jury deliberating.				
6-30-77	Jury deliberations cont'd.				
7-1-77	Jury deliberations cont'd. Jury finds the deft GUILTY on each of counts 1 & 27. Deft cont'd remanded in lieu of bail, BRODERICK, J.				
7-8-77	Filed Deft Request to Charge,				
7-19-77	Filed transcript of record of proceedings, dated June 2,6,7,8-1977				
7-19-77	Filed transcript of record of proceedings, dated June 9,13,14,15,16,-1977				
7-19-77	Filed transcript of record of proceedings, dated June 29,30 July 1-1977				
7-19-77	Filed transcript of record of proceedings, dated June 21,22,27,28-1977				
9-19-77	Deft w/c/p admits to having been previously convicted. BRODERICK, J.				

Cont'd on page 3.

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs RODRIGUEZ, ANTHONY,
a/k/a Little Tony

77	100	2
Yr.	Docket No.	

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELA
9-19-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is committed to the custody of the Atty Gen for impr. for the maximum period authorized by law and for a study as described in 18 U.S.C. Sec 4205(d), the results of such study to be furnished this court within THREE (3) MONTHS unless the court grants further time not to exceed 3 months, whereupon the deft shall be returned to this court and the sentence of impr. hereby imposed shall be subject to modification in accordance with 18 U.S.C. Sec. 4205 (c). Pursuant to the provisions of Sec. 841 of Title 21, U.S.C. the deft is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinement. COURT recommends that there be special attention given by the Atty Gen. to the problem of deft's apparent drug addiction. BRODERICK, J. (all copies issued).	
9-26-77	Filed Deft's NOTICE OF APPEAL to the U.S.C.A. from the order filed 9-19-77. Mailed Notices to U.S. Atty and the counsel for the appellant.	
9-29-77	Filed CJA 20 appointment & voucher for counseling services. Copy # 2.	
9-29-77	~~Filed commitment & appeal~~ [illegible] delivered to McCon 9-[illegible]	
10-6-77	Filed Mag's Final Commitment.	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By Deputy Clerk

Interval (per Section II)	Start Date End Date	Ltr. Code	Total Days

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO ☐
OTHER MINOR OFFENSE MO ☐
OTHER MISDEMEANOR Mis ☐
FELONY Fel ☒

JUDGE/MAGISTRATE: Assigned 0208 1 0866 Disp./Sentence
District Office

U.S. vs. RODRIGUEZ, FABIAN
(LAST, FIRST, MIDDLE)

JUVENILE ☐

Date Filed Mo. Day 02 14 No. of Days 24

77 0100 Yr. Docket No.

U.S. MAG. CASE NO.

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) &.841(b)(1)(A)	Possession & distribution of Heroin, I.	20&22

SUPERSEDING COUNTS

9/27

BAIL • RELEASE
☐ Denied AMT Set $ 000
☐ Fugitive ☐ Pers. Recog. ☐ PSA
Date
☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Prty Cust.
☐ Bail Not Made
☐ Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began	High Risk Date	INDICTMENT ☒ Information ☐	ARRAIGNMENT	TRIAL	SENTENCE
Summons Served	Indict. Waived ☐	2-14-77	1st Plea 3-10-77 ☒ NG ☐ G ☐ NOL	Trial Set For	Disposition of Charges ☐ Convicted ☐ Acquitted ☐ Dismissed
First Appearance	In Charging District	Superseding ☐ Indict/Info ☐	Final Plea ☐ NG ☐ G ☐ NOL	Voir Dire Trial Began Trial Ended	9-19-77

TR

MAGISTRATE

		DATE	INITIAL/NO.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant Issued			
COMPLAINT			
OFFENSE (In Complaint)			

INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING — Date Scheduled — Date Held
☐ WAIVED ☐ NOT WAIVED
☐ INTERVENING INDICTMENT
Tape Number
INITIAL/NO.
OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT OF

U.S. Attorney or Asst.

James A. Moss
791-0069
244

ATTORNEYS Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

* Show last names and suffix numbers of other defendants on same indictment/information

Gallardo, et al.

DATE	(DOCUMENT NO.) PROCEEDINGS	EXCLUDABLE DELAY
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.	
3-3-77	Indictment Ordered unsealed........Frankel, J.	
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.	
3-15-77	Filed AFFIDAVIT of James A. MOSS, for writ of Habeas Corpus Ad Prono. RET: 3-22-77.	
3-21-77	Filed CJA 23 Financial Affidavit.	
4-5-77	Deft with assigned counsel Edward Panzer pleads not guilty. Deft produced on Writ. Pre-trial Conference held. Broderick, J.	3 4-5-77
4-26-77	Filed ORDER AND AFFIDAVIT of James A. Moss-the deft is to appear in the State Supreme Court for sentencing RET: 4-29-77.... BRODERICK, J. (Copy to Marshal)	
4-29-77	Pre-trial conference held.	3 4-29
5-18-77	Pre-trial Conference held. Attys & interpreter's present.. Broderick, J.	3 5-18

Cont'd on page 2

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(H).

DATE	IV. PROCEEDINGS (continued) PAGE TWO (DOCUMENT NO.)	V. EXCLUDABLE DELAY
5-27-77	Filed Govt's Trial Memorandum.	
5-27-77	Filed Govt's Requests to Charge.	
5-23-77	Trial begun with a jury. Atty pres. Jury selection.	
5-24-77	Trial cont'd. Jury selection cont'd.	
5-25-77	Trial cont'd. Jury selection cont'd and concluded.	
5-26-77	Trial cont'd.	
5-31-77	" "	
6-1-77	" "	
6-2-77	" "	
6-3-77	Filed transcript of record of proceedings, dated 4-29-77	
6-6-77	Trial Cont'd.	
6-7-77	" "	
6-8-77	" "	
6-9-77	" "	
6-16-77	Filed CJA 20 Appointment & voucher for counseling services. Copies 2&5.	
6-13-77	Trial adj'd to 6-14-77. Juror #7, excused and a alternate juror is excused.	
6-14-77	Trial cont;d.	
6-15-77	" "	
6-16-77	" "	
6-21-77	" " Govt Rests.	
6-28-77	Filed Govt's SUPPLEMENTAL REQUEST TO CHARGE.	
6-27-77	Trial cont'd. Deft's motion for a directed verdict of acquittal and to dismiss the indictment - Denied.	
6-28-77	Deft summation. Govt's rebuttal summation.	
6-29-77	Court charges the jury. Jury deliberating.	
6-30-77	Jruy deliberations cont'd.	
7-1-77	Jury deliberationd cont'd. Jury finds the deft GUILTY on each of counts1, 20& 22. Deft is remanded in lieu on bail. BRODERICK, J.	
7-19-77	Filed transcript of record of proceedings, dated June, 2,6,7,8 - 1977	
7-19-77	Filed transcript of record of proceedings, dated June 9,13,14,15,16, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 29,30, July 1, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 21,22, 27,28 1977	
8-1-77	Filed CJA 20 Appointment & voucher for counseling services. Copies 2 & 5.	
9-19-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is hereby committed to the custody of the Atty Gen for impr. for a period of FIFTEEN (15) Years, on each of counts 1,20 and 22, to run concurrently with each other and to run concurrently with sentence imposed on 4-29-77 from the date of the writ 4-5-77. Pursuant to the provisions of Sec. 841 of title 21, U.S.Code the deft is placed on Special Parole for a period of SIX (6) Years, to commence upon expiration of confinement. BRODERICK, J. (all copies issued).	
9-23-77	Filed commitment & entered return, Deft delivered to Rikers Island, N.Y	
9-29-77	Filed Deft's NOTICE OF APPEAL to the USCA from the JUDGMENT of 9-19-77. Mailed Notices to U.S. Atty and Counsel for the appellent.	
9-29-77	Filed copy of warrant for arrest of deft.	

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

Cont'd on page 2

PAGE 3 USA -VS- RODRIGUEZ, FABIAN 77 CR 100 - 16

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs

Yr. Docket No.

V. EXCLUDABLE DELA

DATE	PROCEEDINGS (continued) (Document No.)
9-30-77	Filed Writ of H/C as prosequendum for the deft. RET: Satisfied on [illegible]-28-77.

A TRUE COPY
RAYMOND R. BURGHARDT, Clerk
By
Deputy Clerk

AO 256A

0208 1 0866

VELASQUEZ

a/k/a Vaquero,

(LAST, FIRST, MIDDLE)

02 14 | 77 0100

24

U.S. MAG CASE NO

OFFENSES CHARGED

US TITLE SECTION		ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, I.	5&9

9/26

BAIL • RELEASE

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began

Summons Served

First Appearance

High Risk Date

In Charging District

INDICTMENT ☒ Information ☐ 2-14-77

Indict. Waived ☐

Superseding ☐ Indict/Info ☐

ARRAIGNMENT

1st Plea 3-10-77 ☒ NG ☐ G ☐ NOL

G. Plea W/Drawn

Final Plea ☐ NG ☐ G ☐ NOL

Trial Set For

TRIAL

Voir Dire ☐

Trial Began ☐

Trial Ended

Disposition of Charges

☐ Convicted

☐ Acquitted

☐ Dismissed

☐ On Government's Motion

SENTENCE

☐ On All Charges

☐ On Lesser Offense(s)

☐ WOP

MAGISTRATE

	DATE	INITIAL/NO.
Search Warrant Issued		
Search Warrant Return		
Summons Issued		
Summons Served		
Arrest Warrant Issued		
COMPLAINT		
OFFENSE (In Complaint)		

INITIAL APPEARANCE DATE

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled / Date Held

☐ WAIVED ☐ NOT WAIVED

☐ INTERVENING INDICTMENT

Tape Number

OUTCOME

☐ DISMISSED

☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.

James A. Moss

791-0069

241

ATTORNEYS

Kenneth Linn

276 - 5th Ave

N.Y. N.Y. 10001

9/19/77

Show last names and suffix numbers of other defendants on same indictment information

Gallardo, et al.

PROCEEDINGS

DATE	DOCUMENT NO.		EXCLUDABLE DELAY	
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.			
3-3-77	Indictment Ordered unsealed........Frankel, J.			
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.			
3-15-77	Filed AFFIDAVIT of James A. Moss, for Writ of Habeas Corpus Ad Prods. RET: 3-22-77.			
4-5-77	Deft No Atty, produced in court on writ. Pre trial conference. Held. Broderick, J.	3	4-6-77	E
4-11-77	Pre-trial Conference held. Deft w/a/p Kenneth Linn pleads not guilty. Deft produced on a writ. BRODERICK, J.	3	4-11-77	
4-29-77	Filed Deft's NOTICE OF MOTION and AFFIDAVIT for an order dismissing the indictment RET: 5-6-77.			
4-29-77	Pre-trial conference held	3	4-29	E
5-9-77	Filed Govt's Affidavit of James A. Moss, in response to deft's motion to dismiss the indictment.			

EXCLUDABLE DE

.3-77	Filed DEFT'S affidavit of Kenneth [illegible], in opposition to the motion of deft dated 4-29-77 by James A. [illegible].
5-19-77	Filed MEMO-ENDORSED on deft's motion dated 4-29-77 - Motion disposed of in part in pre-trial proceedings on 5-3-77 and in part by order herein dated 5-17-77 & 5-18-77. BRODERICK, J. m/n
5-20-77	Filed GOVERNMENT'S BILL OF PARTICULARS.
5-20-77	Filed MEMORANDUM - re: deft's motion to dismiss the indictment. Motion denied. See Memorandum. So ordered BRODERICK, J. m/n
5-27-77	Filed Govt's Trial Memorandum.
5-27-77	Filed Govt's Requests to charge.
5-23-77	Trial begun with a jury. (Atty Pres) Jury selection.
5-24-77	Trial cont'd. Jury selection cont'd.
5-25-77	Trial cont'd. Jury selection cont'd and concluded.
5-26-77	Trial cont'd.
5-31-77	" "
6-1-77	" "
6-2-77	" "
6-3-77	Filed transcript of record of proceedings, dated 4-29-77
6-6-77	Trial Cont'd.
6-7-77	" "
6-8-77	" "
6-9-77	" "
6-13-77	Trial adj'd to 6-14-77. Juror # 7, excused and a alternate juror is excused.
6-14-77	Trial cont'd
6-15-77	" "
6-16-77	" "
6-21-77	" "
6-22-77	" " all parties rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment. Decision reserved.
6-28-77	Filed Govt's SUPPLEMENTAL REQUEST TO CHARGE.
6-27-77	Trial cont;d. All deft's motion for a directed verdict of acquittal and to dismiss the indictment - Denied.
6-28-77	Deft's summation. Govt's rebuttal summation.
6-29-77	Court charges the jury Jury deliberating.
6-30-77	Jury deliberations cont'd.
7-1-77	Jury deliberations cont'd. Jury finds the deft., GUILTY on each of counts 1,5 & 9. Deft cont'd remanded in lieu of bail/ BRODERICK, J.
7-19-77	Filed transcript of record of proceedings, dated June, 2, 6, 7, 8, 1977
7-19-77	Filed transcript of record of proceedings, dated June 9, 13, 14, 15, 16, 1977
7-19-77	Filed transcript of record of proceedings, dated June 29, 30, July 1, 1977
7-19-77	Filed transcript of record of proceedings, dated June 21, 22, 27, 28, 1977

Cont'd on page 3

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs VELASQUEZ, JOSE

77 100
Yr. Docket No.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DEL (a)	(b)	(c)
9-19-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - the Deft is hereby committed to the custody of the Atty Gen for impr. for a period of FIFTEEN (15) years on each of counts 1,5 and 9 to run concurrently with each other and to run concurrently with the New York State sentence imposed on 5/4/77, currently being served by the deft, from the date fo the writ, 4-11-77. Pursuant to the provisions of Sec. 841 of Title 21, U.S. Code the deft is placed on Special Parole for a period of SIX (6) YEARS to commence upon expiration of confinement. BRODERICK, J. (all copies issued).			
9-28-77	Filed Deft's., Notice of Appeal to the U.S.C.A. 2nd cricuit from the Judgement of conviction entered in this action on 9-19-77. Mailed notices.; US Atty & Counsel for Appellant.			
9-29-77	Filed copy of warrant of arrest of deft. RET: 3-28-77 MCC.			
10-18-77	Filed Financial Affidavit.			

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By
Deputy Clerk

AO 256A

Interval (per Section II) | Start Date End Date | Ltr. Total Code Days

0208 1 | 0866 | ZAYAS, [illegible] a/k/a Luis [illegible], a/k/a [illegible] Machado, a/k/a Luisito | 02 14 | 77 0100

(LAST, FIRST, MIDDLE)

U.S. MAG. CASE NO

U.S. TITLE SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, I.	2

9/27

SUPERSEDING COUNTS

BAIL • RELEASE

☐ Fugitive ☐ Pers. Recog. ☐ PSA conditions ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Prty Cust. ☐ Bail Not Made ☐ Status Changed

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began	High Risk Date	INDICTMENT ☒ / Information ☐	ARRAIGNMENT 1st Plea	TRIAL	Disposition of Charges	SENTENCE
3-10-77		2-14-77	3-10-77	Trial Begun 5-23-77	7-1-77	5-15-7
Summons Served		Indict. Waived ☐	☒ NG ☐ G ☐ NOL	Trial Ended 7-1-77	☒ Convicted	
First Appearance		In Charging District / Superseding ☐ Indict/Info ☐	Final Plea ☐ NG ☐ G ☐ NOL	Voir Dire ☐ / Trial Set For	☐ Acquitted ☐ Dismissed ☐ On Government's Motion	☐ On All Charges ☐ On Lesser Offense(s) ☐ WOP

MAGISTRATE

Search Warrant Issued / Return; Summons Issued / Served; Arrest Warrant Issued; COMPLAINT; OFFENSE in Complaint

INITIAL APPEARANCE DATE ▶; PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled ▶ Date Held ▶; ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT; Tape Number

OUTCOME: ☐ DISMISSED; HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT; HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. | ATTORNEYS

James A. Moss
791-0069

244

Show last names and suffix numbers of other defendants on same indictment/information

Gallardo, et al.

DATE (DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.	
3-3-77	Indictment Ordered unsealed........Frankel, J.	
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.	
3-15-77	Filed AFFIDAVIT of James A. Moss, for a Writ of Habeas Corpus Ad Prose. Ret; 3-22-77.	
3-22-77	Deft (atty present) Alan L. Hirshman. pleads NOT GUILTY. deft.-produced on writ. So ordered BRODERICK, J.	
4-11-77	Pre-trial Conference held. Deft thru interpreter Dena Kohn (atty pres) Jerome Landau) Deft/ prodused on a Writ. BRODERICK, J.	3 4-11-77-[illegible]
4-14-77	Filed CJA 23 Financial Affidavit	
4-29-77	Pre-trial conference held.	3 4/29 E 1
5-18-77	Pre-trial conference held. Attys & interpreters present... Broderick, J.	3 5/18 E 1

FORM AO-256

Cont'd on page 2

COMPLETE THE APPLICABLE DOCKET ENTRIES SHOWN IN SECTION V ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC 3161(h)

DATE	IV PROCEEDINGS (continued) PAGE TWO DOCUMENT NO.	V EXCLUDABLE
-27-77	Filed REQUESTS TO CHARGE, by deft.	
-27-77	filed Govt's Rewuests to Charge.	
/27/77	Filed Govt's Trial Memoradum.	
-23-77	Trial begun with a jury. Atty Pres. Jury selection.	
-24-77	" cont'd Jury selection cont'd.	
-25-77	" " . Jury selection cont'd, and concluded.	
-26-77	" " .	
-31-77	" "	
-1-77	" "	
-2-77	" "	
6-3-77	Filed transcript of record of proceedings, dated 4-29-77	
6-9-77	Filed CJA 21 AUTHORIZATION & VOUCHER for expert or other services. Copies 2 & 5.	
6-1-77	Trial cont'd.	
6-2-77	" "	
6-6-77	" "	
6-7-77	" "	
6-8-77	" "	
6-9-77	" "	
6-13-77	Trial adj. to 6-14-77. Juror #7 excused and a alternate juror is excused. Deft not present in hospital.	
6-14-77	Trial cont'd.	
6-15-77	" "	
6-16-77	" "	
6-21-77	" " Govt Rests.	
6-28-77	Filed GOVT'S SUPPLEMENTAL REQUEST TO CHARGE	
6-27-77	Trial cont'd. Deft's motion for a directed verdict of acquittal and to dismiss the indictment - Denied, Govt and deft summation.	
6-28-77	Deft summation - Govt rebuttal summation.	
6-29-77	Court charges the jury. Jury deliberating.	
6-30-77	Jury diliberations cont'd.	
7-1-77	Jury deliberationd cont'd. Jury finds deft Guilty on each of counts 1 & 26. Sentence 9-19-77. Pre-sentence investigations ordered. Deft cont'd remanded in lieu of bail. BRODERICK,J.	
7-8-77	Filed Deft's Supplemental Request the within to be used to charge the jury.	
7-8-77	Filed Deft's ADDITIONAL Request to charge	
7-19-77	Filed transcript of record of proceedings, dated June, 2, 6, 7, 8, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 9, 13, 14, 15, 16, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 29, 30, July 1, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 21, 22, 27, 28, 1977	
9-20-77	Filed Deft's NOTICE OF MOTION AND AFFIDAVIT of Jerome Allan Landau in support for an order directing that the verdict rendered by the jury in this action on 7-1-77 be set aside, etc. RET: 9-30-77 at 9:30 A.M.	

Cont'd on page 3.

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs ZAYAS, [illegible]

77
Yr.

V. EXC
(a)

DATE	PROCEEDINGS (continued) (Document No.)
9-19-77	Filed JUDGMENT AND PROBATION /COMMITMENT ORDER - The deft is Hereby committed to the custody of the Atty Gen for impr. for a period of FIFTEEN (15) YEARS, oneach of counts 1 & 26, to run concurrently with each other, and to run concurrently with the New York State sentence currently being served by deft, from the date of the writ (3-22-77). Pursuant to the provisions of Sec. 841 of Titly 21, U S.C. the deft is placed on Special Parole for a period of SIX (6) YEARS to commence upon expiration of confinement. BRODERICK, J. (all copies issued).
9-19-77	Filed Deft's NOTICE OF APPEAL to the U.S.C.A. from the ORDER of 9-19-77. Mailed Notices to U.S. Atty & the counsel for the appellant.
9-29-77	Filed CJA 21 Authorization & coucher for expert or other services. Copies 2 & 5.
9-29-77	Filed commitment & entered return, [illegible] delivered to Ossining, N.J.
10-4-77	Filed MEMO-ENDORSED on deft's motion filed 9-20-77. Motion denied, BRODERICK, J. m/n
9-29-77	Filed Copy of warrant for arrest of deft .
10-4-77	Filed Govt's Affidavit for a W/ H/C.writ satisfied.9-28-77.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By B. Lowe Deputy Clerk

AO 256A

Interval
(per Section II)

C Ind
1315

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

FERNANDO GALLARDO, a/k/a Frank Zayas,
MARTHA MACHADO, a/k/a Martha Vargas,
a/k/a Martha Gallardo,
CARLOS GALLARDO, a/k/a Carlos
Santiago-Bautista,
HERMINIO GUTIERREZ, a/k/a Cuba,
DOMINGO ZAYAS, a/k/a Luis Nunez,
a/k/a Luis Machado, a/k/a Luisito,
ORLANDO MACHADO, a/k/a Julito,
WILFREDO MACHADO,
HILDA GRACIA, a/k/a Carlos Gallardo's
wife,
JOSE LUIS IGLESIAS, a/k/a Chegui,
LUIS NUNEZ-RAMOS, a/k/a Indio,
CARLOS RIVERA-SANTIAGO, a/k/a Carlitos,
ANGELO ROCHE, a/k/a The Old Man,
JOSE VELASQUEZ, a/k/a Vaquero,
a/k/a Cowboy,
MOISES MALDONADO,
GILBERTO TORRES, a/k/a Little Gilbert,
FABIAN RODRIGUEZ,
RICARDO TIRADO,
LUIS RODRIGUEZ,
JOSE LUIS TERSON, a/k/a The Old Man,
VICTOR MEDINA, a/k/a Vitin,
ANTONIO MORALES, a/k/a Tony the
Mechanic,
RICARDO GARCIA,
ANTHONY RODRIGUEZ, a/k/a Little Tony,
and JOHN DOE, a/k/a Pumarejo,

Defendants.

U. S. DISTRICT COURT
FILED
FEB 14 1977
S. D. OF N. Y.

INDICTMENT

77 Cr.

77 CRIM. 0100

COUNT ONE

The Grand Jury charges:

I. THE CONSPIRACY

1. From on or about the 1st day of October 1973, and continuously thereafter up to and including the 6th day of November 1975, in the Southern District of New York and elsewhere:

FERNANDO GALLARDO, a/k/a Frank Zayas,
MARTHA MACHADO, a/k/a Martha Vargas,
a/k/a Martha Gallardo,
CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista,
HERMINIO GUTIERREZ, a/k/a Cuba,

CROFILM
MAR 4 1977

DOMINGO ZAYAS, a/k/a Luis Nunez, a/k/a
  Luis Machado, a/k/a Luisito,
ORLANDO MACHADO, a/k/a Julito,
WILFREDO MACHADO,
HILDA GRACIA, a/k/a Carlos Gallardo's wife,
JOSE LUIS IGLESIAS, a/k/a Chegui,
LUIS NUNEZ-RAMOS, a/k/a Indio,
CARLOS RIVERA-SANTIAGO, a/k/a Carlitos,
ANGELO ROCHE, a/k/a The Old Man,
JOSE VELASQUEZ, a/k/a Vaquero, a/k/a Cowboy,
MOISES MALDONADO,
GILBERTO TORRES, a/k/a Little Gilbert,
FABIAN RODRIGUEZ,
RICARDO TIRADO,
LUIS RODRIGUEZ,
JOSE LUIS TERSON, a/k/a The Old Man,
VICTOR MEDINA, a/k/a Vitin,
ANTONIO MORALES, a/k/a Tony the Mechanic,
RICARDO GARCIA,
ANTHONY RODRIGUEZ, a/k/a Little Tony, and
JOHN DOE, a/k/a Pumarejo,

the defendants, and others to the Grand Jury known and unknown, including:

Fernando Valenzuela-Verdugo,
Hector Ramos-Iribe,
Humberto Ramos-Serrano, a/k/a Colorado,
  a/k/a Red,
Francisco Machado, a/k/a Paco, a/k/a Paquito,
Jane Doe, a/k/a Carmen, a/k/a Paco's wife,
Felix Machado, a/k/a Felde, a/k/a Ferde,
William Cortes-Rios,
Raymond Rivera,
Benito Cruz, a/k/a Nino,
Jose Rivera, a/k/a Rico,
Raymond Rossy,
Hermenigildo Diaz-Caballero, a/k/a Puton,
Raphael Gonzalez, a/k/a Flaco,
Ramon DeJesus-Cortes, a/k/a Ramoncito,
Raymond Valentine, and
Herman Rosa,

named herein as co-conspirators, but not as defendants, unlawfully, intentionally and knowingly, combined, conspired, confederated and agreed together and with each other, to violate the narcotics laws of the United States, specifically Sections 812, 841(a)(1), 841(b)(1)(A), 951, 952 and 960 of Title 21, United States Code.

II. OBJECTS OF THE CONSPIRACY

2. It was an object of the conspiracy charged herein to unlawfully import and bring into the United States from Mexico large amounts of narcotic drugs, specifically "brown rock" heroin, in violation of Sections 951, 952 and 960 of Title 21, United States Code.

3. It was a further object of said conspiracy to unlawfully distribute and possess with intent to distribute, in this country Mexican "brown rock" heroin, a Schedule I narcotic drug controlled substance, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

III. MEANS OF THE CONSPIRACY

4. Among the means by which the defendants and co-conspirators would and did carry out these objects, and insure the success of their unlawful venture to import, possess and distribute Mexican "brown rock" heroin, were the following:

The conspiracy took the form of a loose-knit business organization, with members of the conspiracy carrying out four basic functions.

(i) Certain co-conspirators based in and around Los Angeles, California (and herein referred to as "the Valenzuela organization") served as importers and sources of supply of heroin.

(ii) Other members of the conspiracy organized, supervised, managed, controlled and financed a New York City-based narcotics distribution organization (hereinafter "the Gallardo organization"), which directed the activities of couriers and middle-level distributors of heroin.

(iii) Couriers of the Gallardo organization travelled between New York City and Los Angeles, California in order to purchase Mexican "brown rock" heroin in multi-kilogram quantities from the Valenzuela organization.

(iv) In turn, these couriers distributed this heroin in wholesale quantities to certain defendants and co-conspirators in New York City who operated as middlemen, purchasing the heroin and, in turn, selling it to their respective customers.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. In August 1974, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, HERMINIO GUTIERREZ, a/k/a Cuba, and HILDA GRACIA, a/k/a Carlos Gallardo's wife, and co-conspirators William Cortes-Rios and Raymond Rivera attended a meeting in Puerto Rico and discussed the admission of Raymond Rivera into the Gallardo organization.

2. In August 1974, co-conspirators William Cortes-Rios and Raymond Rivera travelled from New York City to Los Angeles, California in order to purchase approximately eleven quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe, a member of the Valenzuela organization.

3. In and about August and September 1974, in New York City, co-conspirators William Cortes-Rios and Raymond Rivera distributed and sold approximately eleven quarter-kilogram packages of heroin for approximately $108,000.

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4. In and about August or September 1974, in New York City, the defendant HERMINIO GUTIERREZ, a/k/a Cuba, received approximately one-quarter of a kilogram of heroin.

5. In or about August or September 1974, in New York City, the defendant ANGELO ROCHE, a/k/a The Old Man, received approximately one-half of a kilogram of heroin.

6. In or about August or September 1974, in New York City, the defendant JOSE VELAZQUEZ, a/k/a Vaquero, a/k/a Cowboy, received approximately one-quarter of a kilogram of heroin.

7. In or about August or September 1974, in New York City, the defendant MOISES MALDONADO received approximately one-quarter of a kilogram of heroin.

8. In and about August or September 1974, in New York City, defendant JOSE LUIS IGLESIAS, a/k/a Chegui, and co-conspirator Raymond Rivera discussed the sale of heroin to customers on the Lower East Side of Manhattan.

9. In or about early September 1974, co-conspirator Raymond Rivera travelled from New York City to Los Angeles, California in order to purchase approximately 14 quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe, a member of the Valenzuela organization.

11. In September 1974, in New York City, the defendant LUIS NUNEZ-RAMOS, a/k/a Indio, received approximately one-quarter of a kilogram of heroin.

12. In September 1974, in New York City, the defendant ANGELO ROCHE, a/k/a The Old Man, received approximately one-half of a kilogram of heroin.

13. In September 1974, in New York City, the defendant JOSE VELAQUEZ, a/k/a Vaquero, a/k/a Cowboy, received approximately one-quarter of a kilogram of heroin.

14. In September 1974, in New York City, the defendant MOISES MALDONADO received approximately one-quarter of a kilogram of heroin.

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15. In September 1974, in New York City, the defendant RICARDO TIRADO received approximately one-eighth of a kilogram of heroin.

16. In September 1974, in New York City, the defendant LUIS RODRIGUEZ received approximately one-eighth of a kilogram of heroin.

17. In September 1974, in New York City, the defendant JOSE LUIS TERSON, a/k/a The Old Man, received approximately one-eighth of a kilogram of heroin.

18. In September 1974, in New York City, the defendant VICTOR MEDINA, a/k/a Vitin, received approximately one-quarter of a kilogram of heroin.

19. In September 1974, in New York City, the defendant ANTONIO MORALES, a/k/a Tony the Mechanic, received approximately one-quarter of a kilogram of heroin.

20. In September 1974, in New York City, the defendant RICARDO GARCIA received approximately one-eighth of a kilogram of heroin.

21. In September 1974, in New York City, co-conspirator Raymond Rivera delivered approximately $120,000 in cash, the proceeds from the sale of heroin to customers of the Gallardo organization.

22. In September 1974, in New York City, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, and CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, and co-conspirators Francisco Machado, a/k/a Paco, a/k/a Paquito, and Jane Doe, a/k/a Carmen, a/k/a Paco's wife, counted approximately $120,000 in cash.

23. In September 1974, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, and MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, travelled to California with a large quantity of money and met with members of the Valenzuela organization.

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24. In or about late September or early October 1974, co-conspirator Raymond Rivera travelled from New York City to Los Angeles, California in order to receive approximately 16 quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe, a member of the Valenzuela organization.

25. In or about late September or early October 1974, in New York City, the defendant LUIS RODRIGUEZ received approximately one-quarter of a kilogram of heroin.

26. In October 1974, co-conspirator Raymond Rivera travelled from New York City to Los Angeles, California in order to receive approximately ten quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe, a member of the Valenzuela organization.

27. In October 1974, in New York City, co-conspirator Raymond Rivera delivered approximately ten quarter-kilogram packages of heroin to defendants LUIS NUNEZ-RAMOS, a/k/a Indio, and CARLOS RIVERA-SANTIAGO, a/k/a Carlitos.

28. In October 1974, in New York City, defendants LUIS NUNEZ-RAMOS, a/k/a Indio, CARLOS RIVERA-SANTIAGO, a/k/a Carlitos, and JOSE LUIS IGLESIAS, a/k/a Chegui, and co-conspirator Raymond Rivera had a discussion concerning the sale of heroin to customers of the Gallardo organization.

29. In and aboput October and November 1974, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator Raymond Rivera travelled separately from New York City to Los Angeles, California.

30. In November 1974, in the vicinity of Los Angeles, California, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator Raymond Rivera received approximately 5 quarter-kilograms of heroin from co-conspirators Fernando Valenzuela, Hector Ramos-Iribe and other members of the Valenzuela organization, in exchange for approximately $190,000 in cash.

31. In November 1974, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator Raymond Rivera checked into the George Washington Hotel, New York, New York with approximately 35 quarter-kilograms of heroin in their possession.

32. In November 1974, in New York City, co-conspirator Raymond Rivera delivered on three separate occasions to defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, and CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, and co-conspirator William Cortes-Rios, a total of approximately $250,000 in cash, the proceeds from the sale of heroin to customers of the Gallardo organization.

33. In or about December 1974 or January 1975, in New York City, the defendant FERNANDO GALLARDO, a/k/a Frank Zayas, distributed approximately one and one-quarter kilograms of heroin to defendants GILBERTO TORRES, A/k/a Little Gilbert, and FABIAN RODRIGUEZ.

34. In or about December 1974 or January 1975, defendant WILFREDO MACHADO travelled from New York City to Los Angeles, California in order to receive approximately seven and one-half kilograms of heroin from members of the Valenzuela organization.

35. In January 1975, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, and ORLANDO MACHADO, a/k/a Julito, travelled from New York City to Los Angeles, California in order to pick up approximately twelve and one-half kilograms of heroin from members of the Valenzuela organization.

36. During January 1975, in New York City, co-conspirator Benito Cruz, a/k/a Nino, distributed approximately ten and one-half kilograms of heroin to customers of the Gallardo organization.

37. In January 1975, in New York City, co-conspirator Benito Cruz, a/k/a Nino, drew up a list of certain persons to whom he had recently distributed heroin, indicating the amount and price of the heroin distributed.

38. In January 1975, in New York City, co-conspirator Raymond Rivera distributed approximately one-half of a kilogram of heroin to defendant JOSE LUIS IGLESIAS, a/k/a Chegui.

39. In the early part of 1975, defendant DOMINGO ZAYAS, a/k/a Luis Nunez, a/k/a Luis Machado, a/k/a Luisito, travelled from New York City to Los Angeles, California on two separate occasions in order to pick up quantities of heroin from members of the Valenzuela organization.

40. During the Spring of 1975, in New York City, co-conspirator Raymond Rivera delivered on numerous occasions to defendants MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, JOHN DOE, a/k/a Pumerejo, and HILDA GRACIA, a/k/a Carlos Gallardo's wife and co-conspirator Willie Cortes-Rios, a total of approximately $500,000, the proceeds from the sale of heroin to customers of the Gallardo organization.

41. In or about August 1975, in New York City, defendants HERMINIO GUTIERREZ, a/k/a Cuba, and ANTHONY RODRIGUEZ, a/k/a Little Tony, distributed approximately one-quarter of a kilogram of heroin to co-conspirator Raymond Valentine.

42. In or about August 1975, in New York City, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, and HERMINO GUTIERREZ, a/k/a Cuba, and co-conspirator Raymond Valentine had discussions concerning the price of quarter-kilograms of heroin.

43. On or about September 12, 1975, in New York City, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirators Benito Cruz, a/k/a Nino, and Hernan Rosa discussed the sale of approximately one-half of a kilogram of heroin to another individual.

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44. On or about October 15, 1975, in New York City, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator BENITO CRUZ, a/k/a Nino, and HERMAN ROSA discussed the sale of approximately five kilograms of heroin to another individual.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of October, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, FERNANDO GALLARDO, the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) as alleged in Counts Nineteen, Twenty-three, Twenty-eight and Twenty-nine of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with at least five other persons with respect to whom the defendant FERNANDO GALLARDO occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant FERNANDO GALLARDO obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT THREE

The Grand Jury further charges:

In or about August or September 1974, in the Southern District of New York, HERMINIO GUTIERREZ, a/k/a Cuba, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug

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controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

In or about August or September 1974, in the Southern District of New York, ANGELO ROCHE, a/k/a The Old Man, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FIVE

The Grand Jury further charges:

In or about August or September 1974, in the Southern District of New York, JOSE VELASQUEZ, a/k/a Vaquero, a/k/a Cowboy, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SIX

The Grand Jury further charges:

In or about August or Septmber 1974, in the Southern District of New York, MOISES MALDONADO, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

0208 1 x	0866	ZAYAS, [illegible] a/k/a Luis [illegible], a/k/a [illegible] Machado, a/k/a Luisito (LAST, FIRST, MIDDLE)	02 14	24	77 0100

U.S. MAG. CASE NO ▶

U.S. TITLE SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
21:846	Consp. to violate Federal Narcotics Laws	1
21:812, 841(a)(1) & 841(b)(1)(A)	Possession & distribution of Heroin, I.	26

9/27

SUPERSEDING COUNTS

BAIL • RELEASE

☐ Denied AMT Set ↓ 000 ☐ Date ☐ Bail Not Made ☐ Status Changed

☐ Fugitive ☐ Pers. Recog. ☐ PSA conditions ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Pty Cust. ☐ Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began	INDICTMENT ☒ Information ☐	ARRAIGNMENT	TRIAL	Disposition of Charges	SENTENCE
3-10-77	2-14-77	1st Plea 3-10-77 ☒ NG ☐ G ☐ NOL	Trial Set For	7-1-77	5-15-7
Summons Served	High Risk Date	G Plea W/Drawn	Voir Dire ☐	☒ Convicted ☐ Acquitted ☐ Dismissed	☐ On All Charges ☐ On Lesser Offense(s) ☐ WOP
First Appearance	Indict. Waived ☐ In Charging District	Final Plea ☐ NG ☐ G ☐ NOL	Trial Began 5-23-77 ✓ J ☐ N J	☐ On Government's Motion	
	Superseding ☐ Indict/Info ☐		Trial Ended 7-1-77		

MAGISTRATE

	DATE	INITIAL/NO.		INITIAL/NO.	OUTCOME
Search Warrant Issued			INITIAL APPEARANCE DATE ▶		☐ DISMISSED
Search Warrant Return			PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING — Date Scheduled ▶		☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Summons Issued			Date Held ▶		☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
Summons Served			☐ WAIVED ☐ NOT WAIVED	Tape Number	
Arrest Warrant Issued			☐ INTERVENING INDICTMENT		
COMPLAINT ▶					
OFFENSE (In Complaint)					

ATTORNEYS Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

U.S. Attorney or Asst.

James A. Moss
791-0069

244

Show last names and suffix numbers of other defendants on same indictment/information

Gallardo, et al.

DATE	(DOCUMENT NO.) PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c)
2-14-77	Filed Indictment & Ordered sealed. B/W Ordered. ....Tenney, J. B/W Issued.	
3-3-77	Indictment Ordered unsealed........Frankel, J.	
3-10-77	Deft. not present. Court directs a not guilty plea be entered. Case assigned to Broderick, J. for all purposes....Bryan, J.	
3-15-77	Filed AFFIDAVIT of James A. Moss, for a Writ of Habeas Corpus Ad Prose. Ret: 3-22-77.	
3-22-77	Deft (atty present) Alan L. Hirshman. pleads NOT GUILTY. deft. produced on writ. So ordered BRODERICK, J.	
4-11-77	Pre-trial Conference held. Deft thru interpreter Dena Kohn (atty pres) Jerome Landau) Deft/ prodused on a Writ. BRODERICK, J.	3 4-11-77-[illegible]
4-14-77	Filed CJA 23 Financial Affidavit	
4-29-77	Pre-trial conference held.	3 4/29 E 1
5-18-77	Pre-trial conference held. Attys & interpreters present... Broderick, J.	3 5/18 E 1

FORM AO-256

Cont'd on page 2

CIRCLE THE APPLICABLE DOCKET ENTRIES SHOWN IN SECTION V ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC 3161(h)

DATE	IV PROCEEDINGS (continued) PAGE TWO DOCUMENT NO.	V EXCLUDABLE DE
-27-77	Filed REQUESTS TO CHARGE, by deft.	
-27-77	filed Govt's Rewuests to Charge.	
/27/77	Filed Govt's Trial Memorandum.	
-23-77	Trial begun with a jury. Atty Pres. Jury selection.	
-24-77	" cont'd Jury selection cont'd.	
-25-77	" " . Jury selection cont'd, and concluded.	
-26-77	" " .	
-31-77	" "	
-1-77	" "	
-2-77	" "	
6-3-77	Filed transcript of record of proceedings, dated 4-29-77	
6-9-77	Filed CJA 21 AUTHORIZATION & VOUCHER for expert or other services. Copies 2 & 5.	
6-1-77	Trial cont'd.	
6-2-77	" "	
6-6-77	" "	
6-7-77	" "	
6-8-77	" "	
6-9-77	" "	
6-13-77	Trial adj. to 6-14-77. Juror #7 excused and a alternate juror is excused. Deft not present in hospital.	
6-14-77	Trial cont'd.	
6-15-77	" "	
6-16-77	" "	
6-21-77	" " Govt Rests.	
6-28-77	Filed GOVT'S SUPPLEMENTAL REQUEST TO CHARGE	
6-27-77	Trial cont'd. Deft's motion for a directed verdict of acquittal and to dismiss the indictment - Denied, Govt and deft summation.	
6-28-77	Deft summation - Govt rebuttal summation.	
6-29-77	Court charges the jury. Jury deliberating.	
6-30-77	Jury diliberations cont'd.	
7-1-77	Jury deliberationd cont'd. Jury finds deft Guilty on each of counts 1 & 26. Sentence 9-19-77. Pre-sentence investigations ordered. Deft cont'd remanded in lieu of bail. BRODERICK,J.	
7-8-77	Filed Deft's Supplemental Request the within to be used to charge the jury.	
7-8-77	Filed Deft's ADDITIONAL Request to charge	
7-19-77	Filed transcript of record of proceedings, dated June, 2, 6, 7, 8, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 9, 13, 14, 15, 16, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 29, 30, July 1, 1977	
7-19-77	Filed transcript of record of proceedings, dated June 21, 22, 27, 28, 1977	
9-20-77	Filed Deft's NOTICE OF MOTION AND AFFIDAVIT of Jerome Allan Landau in support for an order directing that the verdict rendered by the jury in this action on 7-1-77 be set aside, etc. RET: 9-30-77 at 9:30 A.M.	

Cont'd on page 3.

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS (continued) (Document No.)	V. EXC (a)
9-19-77	Filed JUDGMENT AND PROBATION /COMMITMENT ORDER - The deft is Hereby committed to the custody of the Atty Gen for impr. for a period of FIFTEEN (15) YEARS, oneach of counts 1 & 26, to run concurrently with each other, and to run concurrently with the New York State sentence currently being served by deft, from the date of the writ (3-22-77). Pursuant to the provisions of Sec. 841 of Titly 21, U S.C. the deft is placed on Special Parole for a period of SIX (6) YEARS to commence upon expiration of confinement. BRODERICK, J. (all copies issued).	
9-19-77	Filed Deft's NOTICE OF APPEAL to the U.S.C.A. from the ORDER of 9-19-77. Mailed Notices to U.S. Atty & the counsel for the appellant.	
9-29-77	Filed CJA 21 Authorization & coucher for expert or other services. Copies 2 & 5.	
9-29-77	Filed commitment & entered return, [illegible] delivered to [illegible], N.J.	
10-4-77	Filed MEMO-ENDORSED on deft's motion filed 9-20-77. Motion denied, BRODERICK, J. m/n	
9-29-77	Filed Copy of warrant for arrest of deft .	
10-4-77	Filed Govt's Affidavit for a W/ H/C.writ satisfied.9-28-77.	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By B. Lasun Deputy Clerk

'C Ind
1315

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
FEB 14 1977
S. D. OF N. Y.

UNITED STATES OF AMERICA

-v-

FERNANDO GALLARDO, a/k/a Frank Zayas,
MARTHA MACHADO, a/k/a Martha Vargas,
  a/k/a Martha Gallardo,
CARLOS GALLARDO, a/k/a Carlos
  Santiago-Bautista,
HERMINIO GUTIERREZ, a/k/a Cuba,
DOMINGO ZAYAS, a/k/a Luis Nunez,
  a/k/a Luis Machado, a/k/a Luisito,
ORLANDO MACHADO, a/k/a Julito,
WILFREDO MACHADO,
HILDA GRACIA, a/k/a Carlos Gallardo's
  wife,
JOSE LUIS IGLESIAS, a/k/a Chegui,
LUIS NUNEZ-RAMOS, a/k/a Indio,
CARLOS RIVERA-SANTIAGO, a/k/a Carlitos,
ANGELO ROCHE, a/k/a The Old Man,
JOSE VELASQUEZ, a/k/a Vaquero,
  a/k/a Cowboy,
MOISES MALDONADO,
GILBERTO TORRES, a/k/a Little Gilbert,
FABIAN RODRIGUEZ,
RICARDO TIRADO,
LUIS RODRIGUEZ,
JOSE LUIS TERSON, a/k/a The Old Man,
VICTOR MEDINA, a/k/a Vitin,
ANTONIO MORALES, a/k/a Tony the
  Mechanic,
RICARDO GARCIA,
ANTHONY RODRIGUEZ, a/k/a Little Tony,
and JOHN DOE, a/k/a Pumarejo,

Defendants.

INDICTMENT

77 Cr.

77 CRIM. 0100

COUNT ONE

The Grand Jury charges:

I. THE CONSPIRACY

1. From on or about the 1st day of October 1973, and continuously thereafter up to and including the 6th day of November 1975, in the Southern District of New York and elsewhere:

FERNANDO GALLARDO, a/k/a Frank Zayas,
MARTHA MACHADO, a/k/a Martha Vargas,
  a/k/a Martha Gallardo,
CARLOS GALLARDO, a/k/a Carlos Santiago-
  Bautista,
HERMINIO GUTIERREZ, a/k/a Cuba,

CROFILM
MAR 4 1977

DOMINGO ZAYAS, a/k/a Luis Nunez, a/k/a
  Luis Machado, a/k/a Luisito,
ORLANDO MACHADO, a/k/a Julito,
WILFREDO MACHADO,
HILDA GRACIA, a/k/a Carlos Gallardo's wife,
JOSE LUIS IGLESIAS, a/k/a Chegui,
LUIS NUNEZ-RAMOS, a/k/a Indio,
CARLOS RIVERA-SANTIAGO, a/k/a Carlitos,
ANGELO ROCHE, a/k/a The Old Man,
JOSE VELASQUEZ, a/k/a Vaquero, a/k/a Cowboy,
MOISES MALDONADO,
GILBERTO TORRES, a/k/a Little Gilbert,
FABIAN RODRIGUEZ,
RICARDO TIRADO,
LUIS RODRIGUEZ,
JOSE LUIS TERSON, a/k/a The Old Man,
VICTOR MEDINA, a/k/a Vitin,
ANTONIO MORALES, a/k/a Tony the Mechanic,
RICARDO GARCIA,
ANTHONY RODRIGUEZ, a/k/a Little Tony, and
JOHN DOE, a/k/a Pumarejo,

the defendants, and others to the Grand Jury known and unknown, including:

Fernando Valenzuela-Verdugo,
Hector Ramos-Iribe,
Humberto Ramos-Serrano, a/k/a Colorado,
  a/k/a Red,
Francisco Machado, a/k/a Paco, a/k/a Paquito,
Jane Doe, a/k/a Carmen, a/k/a Paco's wife,
Felix Machado, a/k/a Felde, a/k/a Ferde,
William Cortes-Rios,
Raymond Rivera,
Benito Cruz, a/k/a Nino,
Jose Rivera, a/k/a Rico,
Raymond Rossy,
Hermenigildo Diaz-Caballero, a/k/a Puton,
Raphael Gonzalez, a/k/a Flaco,
Ramon DeJesus-Cortes, a/k/a Ramoncito,
Raymond Valentine, and
Herman Rosa,

named herein as co-conspirators, but not as defendants, unlawfully, intentionally and knowingly, combined, conspired, confederated and agreed together and with each other, to violate the narcotics laws of the United States, specifically Sections 812, 841(a)(1), 841(b)(1)(A), 951, 952 and 960 of Title 21, United States Code.

II. OBJECTS OF THE CONSPIRACY

2. It was an object of the conspiracy charged herein to unlawfully import and bring into the United States from Mexico large amounts of narcotic drugs, specifically "brown rock" heroin, in violation of Sections 951, 952 and 960 of Title 21, United States Code.

3. It was a further object of said conspiracy to unlawfully distribute and possess with intent to distribute, in this country Mexican "brown rock" heroin, a Schedule I narcotic drug controlled substance, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

III. MEANS OF THE CONSPIRACY

4. Among the means by which the defendants and co-conspirators would and did carry out these objects, and insure the success of their unlawful venture to import, possess and distribute Mexican "brown rock" heroin, were the following:

The conspiracy took the form of a loose-knit business organization, with members of the conspiracy carrying out four basic functions.

(i) Certain co-conspirators based in and around Los Angeles, California (and herein referred to as "the Valenzuela organization") served as importers and sources of supply of heroin.

(ii) Other members of the conspiracy organized, supervised, managed, controlled and financed a New York City-based narcotics distribution organization (hereinafter "the Gallardo organization"), which directed the activities of couriers and middle-level distributors of heroin.

(iii) Couriers of the Gallardo organization travelled between New York City and Los Angeles, California in order to purchase Mexican "brown rock" heroin in multi-kilogram quantities from the Valenzuela organization.

(iv) In turn, the [illegible]iers distributed this heroin in wholesale quantities t[illegible] defendants and co-conspirators in New York City who opera[illegible] middlemen, purchasing the heroin and, in turn, selling it to their respective customers.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. In August 1974, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, HERMINIO GUTIERREZ, a/k/a Cuba, and HILDA GRACIA, a/k/a Carlos Gallardo's wife, and co-conspirators William Cortes-Rios and Raymond Rivera attended a meeting in Puerto Rico and discussed the admission of Raymond Rivera into the Gallardo organization.

2. In August 1974, co-conspirators William Cortes-Rios and Raymond Rivera travelled from New York City to Los Angeles, California in order to purchase approximately eleven quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe, a member of the Valenzuela organization.

3. In and about August and September 1974, in New York City, co-conspirators William Cortes-Rios and Raymond Rivera distributed and sold approximately eleven quarter-kilogram packages of heroin for approximately $108,000.

JPC:lnd
02-1315

4. In and about August or September 1974, in New York City, the defendant HERMINIO GUTIERREZ, a/k/a Cuba, received approximately one-quarter of a kilogram of heroin.

5. In or about August or September 1974, in New York City, the defendant ANGELO ROCHE, a/k/a The Old Man, received approximately one-half of a kilogram of heroin.

6. In or about August or September 1974, in New York City, the defendant JOSE VELAZQUEZ, a/k/a Vaquero, a/k/a Cowboy, received approximately one-quarter of a kilogram of heroin.

7. In or about August or September 1974, in New York City, the defendant MOISES MALDONADO received approximately one-quarter of a kilogram of heroin.

8. In and about August or September 1974, in New York City, defendant JOSE LUIS IGLESIAS, a/k/a Chegui, and co-conspirator Raymond Rivera discussed the sale of heroin to customers on the Lower East Side of Manhattan.

9. In or about early September 1974, co-conspirator Raymond Rivera travelled from New York City to Los Angeles, California in order to purchase approximately 14 quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe~~,~~ a member of the Valenzuela organization.

11. In September 1974, in New York City, the defendant LUIS NUNEZ-RAMOS, a/k/a Indio, received approximately one-quarter of a kilogram of heroin.

12. In September 1974, in New York City, the defendant ANGELO ROCHE, a/k/a The Old Man, received approximately one-half of a kilogram of heroin.

13. In September 1974, in New York City, the defendant JOSE VELAQUEZ, a/k/a Vaquero, a/k/a Cowboy, received approximately one-quarter of a kilogram of heroin.

14. In September 1974, in New York City, the defendant MOISES MALDONADO received approximately one-quarter of a kilogram of heroin.

15. In September 1974, in New York City, the defendant RICARDO TIRADO received approximately one-eighth of a kilogram of heroin.

16. In September 1974, in New York City, the defendant LUIS RODRIGUEZ received approximately one-eighth of a kilogram of heroin.

17. In September 1974, in New York City, the defendant JOSE LUIS TERSON, a/k/a The Old Man, received approximately one-eighth of a kilogram of heroin.

18. In September 1974, in New York City, the defendant VICTOR MEDINA, a/k/a Vitin, received approximately one-quarter of a kilogram of heroin.

19. In September 1974, in New York City, the defendant ANTONIO MORALES, a/k/a Tony the Mechanic, received approximately one-quarter of a kilogram of heroin.

20. In September 1974, in New York City, the defendant RICARDO GARCIA received approximately one-eighth of a kilogram of heroin.

21. In September 1974, in New York City, co-conspirator Raymond Rivera delivered approximately $120,000 in cash, the proceeds from the sale of heroin to customers of the Gallardo organization.

22. In September 1974, in New York City, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, and CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, and co-conspirators Francisco Machado, a/k/a Paco, a/k/a Paquito, and Jane Doe, a/k/a Carmen, a/k/a Paco's wife, counted approximately $120,000 in cash.

23. In September 1974, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, and MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, travelled to California with a large quantity of money and met with members of the Valenzuela organization.

JPC:lnd
02-1315

24. In or about late September or early October 1974, co-conspirator Raymond Rivera travelled from New York City to Los Angeles, California in order to receive approximately 16 quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe, a member of the Valenzuela organization.

25. In or about late September or early October 1974, in New York City, the defendant LUIS RODRIGUEZ received approximately one-quarter of a kilogram of heroin.

26. In October 1974, co-conspirator Raymond Rivera travelled from New York City to Los Angeles, California in order to receive approximately ten quarter-kilogram packages of heroin from co-conspirator Hector Ramos-Iribe, a member of the Valenzuela organization.

27. In October 1974, in New York City, co-conspirator Raymond Rivera delivered approximately ten quarter-kilogram packages of heroin to defendants LUIS NUNEZ-RAMOS, a/k/a Indio, and CARLOS RIVERA-SANTIAGO, a/k/a Carlitos.

28. In October 1974, in New York City, defendants LUIS NUNEZ-RAMOS, a/k/a Indio, CARLOS RIVERA-SANTIAGO, a/k/a Carlitos, and JOSE LUIS IGLESIAS, a/k/a Chegui, and co-conspirator Raymond Rivera had a discussion concerning the sale of heroin to customers of the Gallardo organization.

29. In and aboput October and November 1974, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator Raymond Rivera travelled separately from New York City to Los Angeles, California.

30. In November 1974, in the vicinity of Los Angeles, California, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator Raymond Rivera received approximately 5 quarter-kilograms of heroin from co-conspirators Fernando Valenzuela, Hector Ramos-Iribe and other members of the Valenzuela organization, in exchange for approximately $190,000 in cash.

31. In November 1974, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator Raymond Rivera checked into the George Washington Hotel, New York, New York with approximately 35 quarter-kilograms of heroin in their possession.

32. In November 1974, in New York City, co-conspirator Raymond Rivera delivered on three separate occasions to defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, and CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, and co-conspirator William Cortes-Rios, a total of approximately $250,000 in cash, the proceeds from the sale of heroin to customers of the Gallardo organization.

33. In or about December 1974 or January 1975, in New York City, the defendant FERNANDO GALLARDO, a/k/a Frank Zayas, distributed approximately one and one-quarter kilograms of heroin to defendants GILBERTO TORRES, A/k/a Little Gilbert, and FABIAN RODRIGUEZ.

34. In or about December 1974 or January 1975, defendant WILFREDO MACHADO travelled from New York City to Los Angeles, California in order to receive approximately seven and one-half kilograms of heroin from members of the Valenzuela organization.

35. In January 1975, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, and ORLANDO MACHADO, a/k/a Julito, travelled from New York City to Los Angeles, California in order to pick up approximately twelve and one-half kilograms of heroin from members of the Valenzuela organization.

36. During January 1975, in New York City, co-conspirator Benito Cruz, a/k/a Nino, distributed approximately ten and one-half kilograms of heroin to customers of the Gallardo organization.

37. In January 1975, in New York City, co-conspirator Benito Cruz, a/k/a Nino, drew up a list of certain persons to whom he had recently distributed heroin, indicating the amount and price of the heroin distributed.

38. In January 1975, in New York City, co-conspirator Raymond Rivera distributed approximately one-half of a kilogram of heroin to defendant JOSE LUIS IGLESIAS, a/k/a Chegui.

39. In the early part of 1975, defendant DOMINGO ZAYAS, a/k/a Luis Nunez, a/k/a Luis Machado, a/k/a Luisito, travelled from New York City to Los Angeles, California on two separate occasions in order to pick up quantities of heroin from members of the Valenzuela organization.

40. During the Spring of 1975, in New York City, co-conspirator Raymond Rivera delivered on numerous occasions to defendants MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, CARLOS GALLARDO, a/k/a Carlos Santiago-Bautista, JOHN DOE, a/k/a Pumerejo, and HILDA GRACIA, a/k/a Carlos Gallardo's wife and co-conspirator Willie Cortes-Rios, a total of approximately $500,000, the proceeds from the sale of heroin to customers of the Gallardo organization.

41. In or about August 1975, in New York City, defendants HERMINIO GUTIERREZ, a/k/a Cuba, and ANTHONY RODRIGUEZ, a/k/a Little Tony, distributed approximately one-quarter of a kilogram of heroin to co-conspirator Raymond Valentine.

42. In or about August 1975, in New York City, defendants FERNANDO GALLARDO, a/k/a Frank Zayas, and HERMINO GUTIERREZ, a/k/a Cuba, and co-conspirator Raymond Valentine had discussions concerning the price of quarter-kilograms of heroin.

43. On or about September 12, 1975, in New York City, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirators Benito Cruz, a/k/a Nino, and Hernan Rosa discussed the sale of approximately one-half of a kilogram of heroin to another individual.

44. On or about October 15, 1975, in New York City, defendant FERNANDO GALLARDO, a/k/a Frank Zayas, and co-conspirator BENITO CRUZ, a/k/a Nino, and HERMAN ROSA discussed the sale of approximately five kilograms of heroin to another individual.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of October, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, FERNANDO GALLARDO, the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1) (A) as alleged in Counts Nineteen, Twenty-three, Twenty-eight and Twenty-nine of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with at least five other persons with respect to whom the defendant FERNANDO GALLARDO occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant FERNANDO GALLARDO obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT THREE

The Grand Jury further charges:

In or about August or September 1974, in the Southern District of New York, HERMINIO GUTIERREZ, a/k/a Cuba, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug

(Reporter Morris Klipman)

JPC:lnd
02-1315

controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

In or about August or September 1974, in the Southern District of New York, ANGELO ROCHE, a/k/a The Old Man, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT FIVE

The Grand Jury further charges:

In or about August or September 1974, in the Southern District of New York, JOSE VELASQUEZ, a/k/a Vaquero, a/k/a Cowboy, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT SIX

The Grand Jury further charges:

In or about August or Septmber 1974, in the Southern District of New York, MOISES MALDONADO, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

JPC:lnd
02-1315

COUNT SEVEN

The Grand Jury further charges:

In September 1974, in the Southern District of New York, LUIS NUNEZ-RAMOS, a/k/a Indio, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHT

The Grand Jury further charges:

In September 1974, in the Southern District of New York, ANGELO ROCHE, a/k/a The Old Man, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In September 1974, in the Southern District of New York, JOSE VELASQUEZ, a/k/a Vaquero, a/k/a Cowboy, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TEN

The Grand Jury further charges:

In September 1974, in the Southern District of New York, MOISES MALDONADO, the defendant, unlawfully, intentionally and knowingly did posses with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT ELEVEN

The Grand Jury further charges:

In September 1974, in the Southern District of New York, RICARDO TIRADO, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWELVE

The Grand Jury further charges:

In September 1974, in the Southern District of New York, LUIS RODRIGUEZ, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT THIRTEEN

The Grand Jury further charges:

In September 1974, in the Southern District of New York, JOSE LUIS TERSON, a/k/a The Old Man, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FOURTEEN

The Grand Jury further charges:

In September 1974, in the Southern District of New York, VICTOR MEDINA, a/k/a Vitin, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FIFTEEN

The Grand Jury further charges:

In September 1974, in the Southern District of New York, ANTONIO MORALES, a/k/a Tony the Mechanic, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SIXTEEN

The Grand Jury further charges:

In September 1974, in the Southern District of New York, RICARDO GARCIA, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

In or about late September or early October 1974, in the Southern District of New York, LUIS RODRIGUEZ, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT EIGHTEEN

The Grand Jury further charges:

In October 1974, in the Southern District of New York, JOSE LUIS IGLESIAS, a/k/a Chegui, LUIS NUNEZ RAMOS, a/k/a Indio, and CARLOS RIVERA-SANTIAGO, a/k/a Carlitos, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two and one-half kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT NINETEEN

The Grand Jury further charges:

In or about November 1974, in the Southern District of New York, FERNANDO GALLARDO, a/k/a Frank Zayas, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 35 quarter-kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY

The Grand Jury further charges:

In or about December 1974 or January 1975, in the Southern District of New York, FERNANDO GALLARDO, a/k/a Frank Zayas, GILBERTO TORRES, a/k/a Little Gilbert, and FABIAN RODRIGUEZ, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one and one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-ONE

The Grand Jury further charges:

In or about December 1974 or January 1975, in the Southern District of New York, WILFREDO MACHADO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately seven and one-half kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-TWO

The Grand Jury futher charges:

In or about January 1975, in the Southern District of New York, GILBERTO TORRES, a/k/a Little Gilbert, and FABIAN RODRIGUEZ, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

JPC:lnd
02-1315

COUNT TWENTY-THREE

The Grand Jury further charges:

In or about January 1975, in the Southern District of New York, FERNANDO GALLARDO, a/k/a Frank Zayas, MARTHA MACHADO, a/k/a Martha Vargas, a/k/a Martha Gallardo, and ORLANDO MACHADO, a/k/a Julito, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately twelve and one-half kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWENTY-FOUR

The Grand Jury further charges:

In or about January 1975, in the Southern District of New York, VICTOR MEDINA, a/k/a Vitin, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY-FIVE

The Grand Jury further charges:

In or about January 1975, in the Southern District of New York, JOSE LUIS IGLESIAS, a/k/a Chegui, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

02-1315

COUNT TWENTY-SIX

The Grand Jury further charges:

In or about February or March 1975, in the Southern District of New York, DOMINGO ZAYAS, a/k/a Luis Nunez, a/k/a Luis Machado, a/k/a Luisito, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately three and one-half kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWENTY- SEVEN

The Grand Jury further charges:

In or about August 1975, in the Southern District of New York, HERMINIO GUTIERREZ, a/k/a Cuba, and ANTHONY RODRIGUEZ, a/k/a Little Tony, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section.)

COUNT TWENTY-EIGHT

The Grand Jury further charges:

On or about the 12th day of September, 1975, in the Southern District of New York, FERNANDO GALLARDO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), Title 18, United States Code, Section 2.)

JPC:lnd
02-1315

COUNT TWENTY-NINE

The Grand Jury further charges:

On or about the 15th day of October, 1975 in the Southern District of New York, FERNANDO GALLARDO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately five kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

MAR 23 1977 Deft. (Carlos Rivera-Santiago) (atty present) Theodore Kriger assigned counsel. ~~Bail~~ Deft. Pleads "Not Guilty" Bail fixed in the amount of $25,000. cash or surety. Deft. contd. remanded in lieu of bail.

Brodrick, J.

↓ (see next sheet)

77 CRIM. 0100

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

FERNANDO GALLARDO, a/k/a Frank Zayas,
et. al.

Defendants.

INDICTMENT

77 Cr.

49

In violation of Title 21, United States Code, Sections 812, 841(a)(1), 841(b)(1)(A), 951, 952, and 960 and Title 18, United States Code, Section 2.

ROBERT B. FISKE, JR.
United States Attorney.

A TRUE BILL

Emil H. Korf
Foreman.

U.S. DISTRICT COURT
FILED
FEB 14 1977
S.D. OF N.Y.

JUDGE BRODERICK

February 14 1977 - Filed Indictment. Ordered Sealed. Bench warrant ordered as to each defendant.
Tenney J.

March 3 1977 - Indictment ordered unsealed.
Frankel J.

R

March 10, 1977 —

Deft. Ricardo Garcia (counsel Herbert Brown - not present.) Court directs a not guilty plea be entered. Deft. continued remanded in lieu of bail fixed at $100,000. cash.

Deft. Luis Rodriguez (atty Jack Lipson) pleads not guilty. Deft. continued remanded in lieu of bail fixed at $100,000. c/s secured by $10,000. cash.

(over) →

March 10, 1977 – Deft. Anthony Rodriguez — (no counsel present). Court directs a not guilty plea be entered. Deft. continued remanded in lieu of bail fixed at $75,000. c/s.

Deft. Jose Luis Iglesias (Atty. Morris Cohen) pleads not guilty. Deft. continued remanded in lieu of bail fixed at $300,000. c/s.

Deft. Orlando Machado — (no atty present) Court directs a not guilty plea be entered. Deft. continued remanded in lieu of bail fixed at $100,000 c/s.

Note: Interpreter present — Norma Seltzer

Deft. Frank Gallardo, Carl , Gallardo, Herminio Gutierrez, Domingo Zaya, Martha Machado, Wilfredo Machado, Hilda Garcia, Luis Nunez-Ramos, Carlos Rivera-Santiago, Angelo Roche, Jose Valasquez, Moises Maldonado, Gilberto Torres, Fabian Rodriguez, Jose Luis Gerson, Ricardo Tirado, Victor Medina, Antonio Morales, John Doe a/k/a "Pumarejo", Bench warrants issued as to all of the above named defendants. Assigned Broderick J. for all purposes. Van Pelt Bryan J.

MAR 14 1977 Pre-Trial conference held as to defts. (Interpreter Norma Seltzer present) Louis Rodriguez, Anthony Rodriguez, Jose Luis Inglesias, Orlando Machado, Ricardo Garcia.

Trial May 23, 1977.

Deft. Ricardo Garcia (atty present) withdraws his plea of not Guilty as to count ONE (1) and pleads "Guilty" to count ONE (1). Sentence April 25, 1977 Pre-Sentence investigation ordered.

Bail reduced to $25,000. P.R.B. Deft. released R.O.R. ~~to be~~ until 4:00 P.M. on Mar. 15, 1977 to post bail. Condition of bail being that deft. not leave the jurisdiction of the Court (Southern District of N.Y.) without ~~notifying~~ prior notice to his atty. and the U.S. atty.

Broderick, J. Sc

MAR 16 1977 applications to ~~rate~~ reduce bail by Defts (atty Present)

Anthony Rodriguez - bail reduced to $25,000. cash or surety.

Jose Luis Inglesias. (Interpreter Norma Seltzer) bail reduced to $50,000. cash or surety.

Orlando Machado - application to reduce bail "denied."

Broderick J.

Sc

MAR 22 1977 Defts Domingo Zayas + Wilfredo Machado (atty present Alan L. Hirshman.) Both defts plead "Not Guilty."

Deft. Wilfredo Machado ~~to~~ remanded in lieu of bail fixed in the amount of $25,000. cash or surety.

Deft. Domingo Zayas produced in court on writ.

Broderick, J.

Sc

MAR 23 1977 Deft. Angelo Roche (atty present) Theodore Mendez Esq.

Deft. pleads "Not Guilty" released on $75,000 surety + $25,000 ca[illegible] bail. Bail limits to include Puerto Rico and to report to U.S. Marshal every day

Broderick, J. Sc

(over)

4/4/77 -- Deft. Carlos Rivera-Santiago (in custody) present w/ atty. Hugh Cunniffe (for this bail hearing only), & AUSA James Moss. Deft. is released from jail on $25,000 cash/surety bail w/ the following conditions 1. -- deft. be in the custody of his uncle, Victor Burgos.

2. -- deft. to report to U. S. Marshal when in the S.D.N.Y. on a daily basis & report to U.S. Marshal when in District of Puerto Rico on a daily basis. On wk. ends or holidays, deft. is to make arrangements w/ Marshal's so that he may advise local police of his whereabouts.

3. Bail limits to include:
S.D. of N.Y.
E.D. of N.Y. &
District of Puerto Rico

Broderick, J JA

APR 5 1977 Deft. (Fabian Rodriguez) with assigned counsel, Edward Panzer, Esq. Pleads not Guilty.
Defts Jose Velasquez & Antonio Morales no attys.
all defts (3) produced in court on writ. Pre-Trial confer. held.
Sc ~~[illegible]~~ Broderick, J.

APR 6 1977 Deft. Antonio Morales - Interp. Samuel Alfonso (no atty.)
Pre-Trial confer. held.
Sc Broderick, J.

(over)

APR 11 1977 Pre-Trial conference held. Dena Kahn

Deft. Domingo Zayas s/m interpreter (atty present Jerome Landau Esq.)

Deft. Luis Nunez-Ramos - (atty present. Theodore Krieger Esq.) pleads "Not Guilty."

Deft. Jose Velazquez (atty present Kenneth Linn Esq.) pleads "Not Guilty."

Deft. Antonio Inarauz (atty present - Michael Stokamer Esq.) pleads "Not Guilty." s/m interpreter Richard Schoen

all (4) defts produced in Court on writ.

D

Broderick, J.

(Rep. Joel Hillman - James Moss A.U.S.A. - Paul Leibel, Esq.)

APR 25 1977 Deft. Ricardo Garcia (atty present.) Imposition of sentence on count 1, is suspended and deft. is placed on probation for a period of FOUR (4) YEARS, subject to the standing probation order of this Court. Count 16 is dismissed on motion of deft's counsel with consent of Government.

Broderick, J.

April 29, 1977 Pre-Trial conference held as to defts #5, 6, 7, 9, 10, 11, 12, 13, 16, 18, 21 & 23.

D

Broderick, J.

(Interp. Juana Garcia)

MAY 6 1977 Deft. (Jose Luis Iglesias) atty Present, Application for reduction of Bail. Bail fixed in the amt. of $40,000. P.R.B signed by deft. & co-signed by Alcelio Diaz, David DeJesus, David Carmona, Awilda Nieves, Jose Burgos & Robert Vasquez, and $10,000. secured by pass books of Alcelio Diaz, David DeJesus, David Carmona & Awilda Nieves.

MAY 9 1977 Deft. (Jose Luis Iglesias) atty present. (Interpreters Samuel Alfonso & Juana Garcia) hearing held Further conditions of bail being that bail limits are Southern & Eastern Districts of N.Y., and to report daily in person or by telephone to U.S. attys office.

Broderick, J.

MAY 13 1977. Deft. Luis Rodriguez (US Atty - James A Moss + Deft's atty Herbert Brand) present. Deft withdraws plea of Not Guilty and pleads Guilty to Count - only. Pre. sentence Report ordered. Bail contd $100. 000.= Bail limits to include Southern and Eastern dist of NY and to get the consent of the U. S. Atty where he can be reached ~~[illegible] in writing~~ if he decides to leave. Sentenced Aug. 2, 1977

Broderick J.

MAY 18 1977 Pre-trial conference held as to defts, 5, 6, 7, 9, 16 + 21. attys + interpreter's present.

Deft. Orlando Machado (atty present) Suppression hearing held. + concluded.

Deft. Wilfredo Machado thru interpreter Richard Schoen (atty present) withdraws his plea of Not Guilty as to count 21, and pleads Guilty to count 21, Pre-Sentence investigation ordered. Sentence Aug 2, 1977. Continued Remanded.

Broderick, J.

MAY 20 1977 Deft. Jose Luis Iglesias (atty present) with interpreter Richard Schoen. Hearing held.

Broderick, J.

MAY 23 1977 Trial begun with a jury as to defts Domingo Zayas (5), Orlando Machado (6), Jose ~~Luis~~ ~~Angel~~ Iglesias (9) Luis Munoz-Ramos (10) Carlos Rivera-Santiago (11), Angelo Roche (12), Jose Velasquez (13), Fabian Rodriguez (16), Antonio Morales (21), Anthony Rodriguez (23). (attys present) #6, with interpreter Dena Kohn, #9 with interpreter Rose Lavener, #21, with interpreter Richard Schoen. (over)

MAY 23 1977 cont'd.
Jury selection

MAY 24 1977 Trial cont'd. Jury selection cont'd.

MAY 25 1977 Trial cont'd. Jury selection cont'd & concluded.

MAY 26 1977 Trial cont'd.

MAY 27 1977 Deft. (#9) José Luis Iglesias (atty present) with interpreter Rose Lavernes withdraws his plea of "not Guilty" on each of counts 1 and 25, and pleads "Guilty" to each of counts 1 and 25. Pre-sentence investigation ordered, sentence Aug. 2, 1977. Bail cont'd.
Broderick, J.

MAY 31, 1977 Trial cont'd. as to defts #5, 6, 10, 11, 12, 13, 16, 21 & 23.

JUN 1 1977 Trial cont'd. Hearing held as to deft. Orlando-Machado #21 and deft's #21 motion for a mistrial. "Decision Reserved."

JUN 2 1977 Trial cont'd.

JUN 6 1977 Trial cont'd.

JUN 7 1977 Trial cont'd.

JUN 8 1977 Trial cont'd.

JUN 9 1977 Trial cont'd.

JUN 13 1977 Trial adj. to 6/14/77. Juror #7 excused and a alternate juror is excused. Deft. Domingo Zayas not present, in hospital.

JUN 14 1977 Trial cont'd.

JUN 15 1977 Trial cont'd.

JUN 16 1977 Trial cont'd.

JUN 21 1977 Trial cont'd. Govt. Rests. Deft. #5 Zayas Rests. ~~Deft. #6 Machado Rests~~
Deft. #10 Munoz-Ramos Rests. Deft. Fabian #16 Rodriguez Rests

JUN 22 1977 ~~Deft~~ Trial cont'd. Deft. #11 Santiago Rests. Deft. Velasquez #13 Rests. Deft. Roche #12 Rests. Deft. Anthony #23 Rodriguez Rests. Deft. #21 Morales Rests. Deft. #6 Machado Rests. All Parties Rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment. ~~Decision~~ Decision Reserved.

(over)

(#5,6,10,11,12,1 [illegible])

JUN 27 1977 Trial cont'd. All defts' motions for a directed verdict of acquittal and to dismiss the Indictment - Denied. Deft Orlando Machado #6 motion for mistrial Denied. Govt summation, Deft. Anthony Rodriguez #23 summation Deft #10 Luis Nunez-Ramos summation, Deft #6 Orlando Machado summation

JUN 28 1977 Deft #12 Angelo Roche summation, Deft #11 Carlos Rivera-Santiago summation, Deft #21 Antonio Morales summation, Deft #13 Jose Velasquez summation, Deft #16 Fabian Rodriguez summation, Deft #5 Domingo Zayas summation, Govt. Rebuttal summation.

JUN 29 1977 Court charges the jury. Jury deliberating

JUN 30 1977 Jury deliberations cont'd.

JUL 1 1977 Jury deliberations cont'd. Jury finds the deft. Domingo Zayas #5 Guilty on each of counts 1 + 26. Deft. Orlando Machado #6 Guilty on each of counts 1 + 23. Deft. Luis Nunez-Ramos #10 Guilty on each of counts 1, 7 + 18. Deft. Carlos Rivera-Santiago #11 Guilty on each of counts 1 + 18. Deft. Angelo Roche #12 Guilty on each of counts 1, 4 + 8. Deft. Jose Velasquez Guilty on each of counts 1, 5 + 9. Deft. Fabian Rodriguez Guilty on each of counts 1, 20 + 22. Deft. Antonio Morales Guilty on each of counts 1 + 15. Deft. Anthony Rodriguez Guilty on each of counts 1 + 27. Sentence Sept. 19, 1977 Pre-Sentence Investigations ordered. Defts Carlos Rivera-Santiago #11 + Angelo Roche #12 cont'd on bail. Remainder of Defts cont'd remanded in lieu of bail #5, 6, 10, 13, 16, 21, 23

Broderick, J.

July 11, 1977 Deft. Antonio Morales B/W vacated.

Broderick, J.

July 27, 1977 Deft Orlando Machado (#6) Conference held. Broderick J.

(Rep. Constance Sorrill) (James Moss A.U.S.A. - Frank Dority Esq.)

AUG 2 1977 Deft. Jose Luis Iglesias (atty Present) sentenced to FIVE (5) YEARS on each of counts 1 and 25, to run concurrently with each other.

Pursuant to the provisions of Title 21 Section 841, U.S. Code, the deft. is placed on Special Parole for a term of THREE (3) YEARS, to commence upon the expiration of confinement.

Count 18, is dismissed on motion of defendant's counsel, with consent of the Government.

Deft. Luis Rodriguez (atty Present - Herbert Brown Esq.)

Imposition of sentence on count 12, is suspended and deft. is placed on Probation for a period of THREE (3) YEARS, subject to the standing probation order of this Court.

Counts 1 and 17, are dismissed on motion of deft's counsel, with consent of the Government.

Broderick, J.

SEP 15 1977 Deft. Orlando Machado (atty present) Interpreter Margarita Cartagena present. Motion argued.

Broderick, J.

(Reporter - Morris Kligman - James Moss A.U.S.A.)

SEP 19 1977 Deft. Domingo Zayas Deft produced on writ, with interpreter Richard Schoen, and atty. Jerome Sandale Esq. present. Sentenced to FIFTEEN (15) YEARS, on each of counts 1 and 26, to run concurrently with each other; and to run concurrently with the N.Y. State sentence currently being served by deft., from the date of the writ, 3/22/77.

Pursuant to the provisions of Section 841, of T. 21, U.S.C. the deft. is placed on Special Parole for a period of SIX (6) YEARS, to commence upon the expiration of confinement.

(over)

SEP 19 1977 - Cont'd

Deft. Antonio Morales with atty [illegible] Stakamas present. Sentenced to FIFTEEN (15) YEARS on each of counts 1 and 15, to run concurrently with each other. Pursuant to the provisions of Sec. 841 of T. 21, U.S.C. the deft is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinement

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Deft produced on writ.

Deft. Jose Velasquez with atty Kenneth [illegible] present.

P Sentenced to FIFTEEN (15) YEARS, on each of counts 1, 5 and 9, to run concurrently with each other, and to run concurrently with the N.Y. State sentence imposed on 5/4/77, currently being served by the deft., from the date of the writ, 4/11/77.

Pursuant to provisions of Sec. 841, of T. 21, U.S.C. the deft. is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinement.

Deft. produced on writ.

Deft. Luis Nunez-Ramos, with Atty. Theodore Kreigel present.

Sentenced to FIFTEEN (15) YEARS, on each of counts 1, 7 and 18, to run concurrently with each other, and to run concurrently with the sentence the deft. is currently serving in Puerto Rico, imposed on 2/11/77, from the date of the writ, 4/11/77.

Pursuant to the provisions of Sec. 841, of T. 21, U.S.C. the deft. is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinement.

Deft. produced on writ.

Deft. Fabian Rodriguez, with atty, Robert Mitchell present.

P Sentenced to FIFTEEN (15) YEARS, on each of counts 1, 20 and 22, to run concurrently with each other and to run concurrently with sentence imposed on 4/29/77, from the date of the writ, 4/5/77.

Pursuant to the provisions of Sec. 841, of T. 21, U.S.C. the deft. is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinement.

(over)

SEP 14 1977 with Deft Anthony [illegible] with atty Nicholas Figueroa present

Deft. admits to ~~[illegible]~~ second offender information.

Sentenced to the custody of the Atty. Gen. or his authorized representative for imprisonment for the maximum period authorized by law and for a study as described in 18 U.S.C. Sec 4205(d), the results of such study to be furnished this Court within THREE (3) MONTHS, unless the Court ~~[illegible]~~ grants further time within said 3 months, whereupon the deft. shall be returned to this Court and the sentence of imprisonment hereby imposed will be subject to modification in accordance with 18 U.S.C. Sec. 4205(c)

Pursuant to the provisions of Sec. 841, T. 21, U.S.C. the deft. is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement.

Court recommends that there be special attention by the Atty Gen. to the problem of deft's apparent drug addiction.

Broderick, J.

(Rep. Morris Klugman)

Sept. 21, 1977 Deft. Wilfredo Machado with interpreter Richard Sakoin and atty Stephen Flamhaft.

The court finds that the deft. was 24 yrs of age on the date of his conviction and that there are reasonable grounds to believe that the deft. will benefit from treatment under the Youth Corrections Act.

It is adjudged that the deft. is hereby committed to the custody of the Atty. Gen. and supervision pursuant to 18 U.S.C., Section 5010(b) as extended by Section 4216, until discharged by the United States Parole Commission as provided in 18 U.S.C. Section 5017, on Count 2.

The court suggests that deft. be sent to an institution such as that at Springfield, Missouri, where he can receive appropriate psychiatric treatment.

Count 1 is dismissed on motion of deft's counsel with consent of the Govt.

Broderick, J.

(over)

(Reporter [illegible])

Sept. 23, 1977 Deft. Angu[illegible] with [illegible] Atty present.

Deft. sentenced to FIFTEEN [illegible], on each of counts 1, 4 + 8, to run concurrently with each other)

P

Pursuant to the provisions of Sec. 841, T. 21 U.S.C., the deft. is placed on Special Parole for a period of FIFTEEN (15) YEARS, to commence upon expiration of confinement. Deft Remanded.

Broderick, J.

(Reporter - Joseph Pirozzi - James Moss A.U.S.A. -)

Oct. 5, 1977

Deft. Carlos Rivera-Santiago, with Hugh Cunniff Atty present.

The deft. is hereby committed to the custody of the Atty. General for imprisonment for the maximum period, on each of counts 1 and 8, authorized by law and for a study as described in 18, U.S.C. Sec. 4205(c) the results of such study to be furnished this Court within THREE (3) ~~[illegible]~~ MONTHS, unless the Court grants further time not to exceed THREE (3) MONTHS, whereupon the deft. shall be returned to this Court, and the sentence of imprisonment hereby imposed shall be subject to modification in accordance with U.S.C. Sec. 4205 (c).

Pursuant to the provisions of Sec. 841, ~~[illegible]~~ Title 21, U.S.C. the deft. is placed on Special Parole for a period of THREE (3) YEARS, to commence upon the expiration of confinement.

Deft. to surrender on Oct. 20, 1977 at 4:45 P.M. in Room 128.

Broderick, J.

Then after they have finished I will instruct you on the law that is applicable to this case.

You are still not actors during this stage, but after I have instructed you you will then be charged with rendering a verdict in this case and the whole decision will be in your hands.

So I urge you to listen very closely to the summations from the government and from defense counsel because they will be discussing evidence which has come in over an extended period of time. They will be, to a certain extent, refreshing your recollection as to the evidence, they will be suggesting significance or lack of significance in the evidence.

I have told you before to keep an open mind. I have told you before not to discuss the case among yourselves. And these instructions still hold. You should not discuss this case among yourselves until it is finally submitted to you after my charge. But please pay very close attention as the counsel for the government and the counsel or the defendants make their summations.

We will begin the summations with Mr. Moss for the government.

MR. MSOS: May it please the court,

counsel for the defense, members of the jury:

Good morning.

Before I even begin to sum up in what is now a trial going into its sixth week I want to take this opportunity to thank each and every one of you on behalf of Mr. Hendoga, Miss Peabody, Mr. Ziegler and myself.

You have been here every day of this trial, you have listened to perhaps two dozen witnesses, you have had stipulations read to you, dozens of documents circulated to you. The very last day of the government's case I stood up here for what must have seemed an interminable period of time and I read to you telephone records and stipulations and so forth.

As I predicted in my opening statement, some of the evidence came in with some difficulty, particularly language difficulties, and yet through all of that we have all noticed that you have sat here and you have paid very close attention to the serious matter that is going on.

Now, Judge Broderick has told you on a number of occasions that this is a serious case. It is serious for the government and it is serious for the defendants, and I don't mean to suggest that your attention was anything more than what is due in a matter of this importance, but I also want you to know that your good attention has been observed, has not gone unnoticed and is not going unappreciated.

All of the evidence is in and very soon it will be your duty to determine what the evidence has proven and what the evidence has not proven.

Now, about five or six weeks ago I addressed you in my opening statement and I predicted for you some of the things that the evidence would prove.

I told you that you would see about a two-year conspiracy involving hundreds of thousands of dollars in money, hundreds of thousands of dollars in heroin; that you would learn of a conspiracy to import heroin into this country through California, to send couriers to California to pick up that heroin, to bring it back for distribution in wholesale quantities in New York City. And I submit to you, ladies and gentlemen, that everything I predicted the government would prove has been borne out in the evidence in this case.

But, ladies and gentlemen, don't take my word for it. This conspiracy is not proven and the participation of each of these defendants in that conspiracy is not proven simply by my saying that it is.

You have a very solemn duty, in fairness to the defendants and in fairness to the government, to evaluate the evidence in this case, and there has been a lot of it.

You have heard testimony from witnesses that now fills up four thick volumes of testimony, there are stacks of stipulations and of documents, and, as I told you six weeks ago, the evidence has to be put together. You will have to weave together this conspiracy or weave together the evidence which would disprove that there is a conspiracy, because it does not come in in one smooth, flowing pattern. You have to know the evidence well enough, and I daresay that it is very difficult to sit here and to listen to all of the testimony and to have stipulations ready at you and be able to do that.

That, ladies and gentlemen, is the purpose of my summation and the summations that will follow from my brethren at the defense bar. We will talk to you about the evidence, share with you our perceptions of the evidence so that when you go into the jury room and begin your deliberation you will be able to determine what the evidence does or does not prove.

Now, I wish I could say that I could sum up four or five weeks of testimony in 30 seconds and sit down, but of course I would be lying if I told you that. It is going to take me some time to do that, and I am sure it is going to take some time for the defense attorneys to address you. So I ask you, please, to bear with us just another day or two longer, if it takes even two days, for all of us to sum up to you, continue to pay attention, because we are now approaching the time when the issue will be turned over to you and you will have to have the facility to deal with all the evidence in this case.

What I propose to do for you right now is to go chronologically through the conspiracy and to take each of the pieces of evidence and put them together so that you will see month by month how the conspiracy developed and how each of these defendants and their co-conspirators participated in that conspiracy.

The evidence about the conspiracy begins not with Fernando Gallardo's first trip to California in December of 1973, it actually begins before that, because we learn in the early '70s and even in the late '60s and before that that certain of these defendants and their co-conspirators came together and got to know one another even before they worked together in this conspiracy.

For example, certain of these defendants and the other co-conspirators grew up together on the lower East Side of New York. They lived within blocks of one another and they were boyhood friends.

We know that that was true of Raymond Rossy, that he knew Little Tony, that is, Anthony Rodriguez, the gentleman in the blue shirt; we know that he knew the person who has been referred to in the evidence as Cuba, Herminio Gutierrez; that Little Tony and Cuba were close associates, close friends.

We know as well that Rossy came to know Fabian Rodriguez, who is the gentleman sitting here, the second one in, and Fabian's cousin, Gilbert Torres, when Fabian and Gilbert were both living on Eldridge Street on the lower East Side of New York, and that they knew one another as early as 1970 and 1971.

We know that Tony the Mechanic, that is, Anthony Morales, who is the gentleman sitting just this side of Miss Cohn, the interpreter, was a fixture on the lower East Side in the late '60s and early '70s and was known to Raymond Rivera even then.

We know Raymond Rivera, who was living on the East Side since the '50s, came to know Carlos Santiago. Carlos Santiago is the gentleman sitting right behind Mr. Stokamer. And they knew one another when they worked together in Local 3 of the International Brotherhood of Electrical Workers union, and that was sometime in late 1960s, before Mr. Santiago had his operation.

We know that Raymond Rivera was put into prison in 1970 and was released on a work-release program after six months, and he began to work at a place called the Clinton Travel Bureau. And who did he work with there but William Cortes-Rios. And it was while he was working there that he came to know for the first time Fernando Gallardo and Fernando's brother Carlos Gallardo, who were at that time friends of William Cortes-Rios.

We also know from the testimony of Jaima Velasquez, who was called to the stand by the defendant Angelo Roche, that Jaime Velasquez knew both Angelo Roche and the person who has been described as Cowboy or Vaquero in the evidence, Jose Velasquez.

Angelo Roche is the gentleman sitting just to this side of Antonio Morales, Jose Velasquez is sitting next to him on this side.

We know that Jaime Velasquez knew both of them when he lived on Avenue D on the lower East Side of New York.

And, finally, we know that Carlos Santiago was very, very close friends with Luis Ramos, who is also known as Indio.

Luis Ramos is the gentleman sitting just on this side of Anthony Rodriguez.

In fact, they knew one another so well that Carlos Santiago was the godfather of one of Indio's children.

We first get our look at how the conspiracy formed when we hear the testimony of Benito Cruz.

Mr. Cruz grew up in Brooklyn, New York, and in 1972 he began a partnership with an individual by the name of Papo.

Papo brought him to meet the Machados, because Papo at the time was living with one of the Machado sisters, Margie Machado, I believe it was, and they were all living at the address 127 Stanton Street, and it was through his association with Papo that Benito

Cruz, whose nickname was Nino, you will recall, came to know Martha Machado, came to know Paquito Machado, who is also known as Paco, came to know Felix Machado, came to know Wilfredo Machado, Tony Machado and some of the others.

And in the summer of 1972, that's how he came to know Fernando Gallardo, because Gallardo came up from Puerto Rico and began to live with Martha Machado at 127 Stanton Street. And from then on Benito Cruz and Fernando Gallardo formed a union, a union in legitimate business in that they shared the partnership of Benito Cruz' beauty parlor, and an illegitimate business, in that they began to deal in small quantities of cocaine and heroin. They bought from a source that Fernando Gallardo had and they sold through Paquito Machado, Cuba and others. But they were still doing very small quantities of heroin, and the heroin they were dealing in was white heroin.

That was to change in December of 1973.

You will recall that in the year 1973 there was a panic. There was very little white heroin to be had and a new source of supply had to be developed. That source of supply was developed when a person by the name of Jorge Vasquez came to talk to

Benito Cruz and offered to take Cruz out to California in order to meet a source of brown rock heroin in California.

Now, at this time brown rock heroin was a very new and a very rare commodity. There was, as I said, a panic on the street, and previous to that there had been only one, white heroin.

Benito Cruz before December of 1973 had never seen brown heroin.

Benito Cruz would not go to California, and that's in keeping with his entire pattern of operation that he testified about over the course of the day or so that he testified. So he took Jorge Vasquez to his partner, Fernando Gallardo, and it was arranged that Gallardo would go to California with Vasquez. And the two of them go out, Cruz and Gallardo get together some money to pay Vasquez and to purchase the heroin out there and Gallardo and Vasquez come back with a quantity which I believe was five ounces, which roughly translates into half a pack, or approximately an eighth of a kilogram of heroin, and it was brown rock heroin.

Gallardo tells Cruz, "I think I can get the connection the next time we go out."

Vasquez and Gallardo make a second trip, they come back with another package of heroin, and this time Gallardo tells Cruz, "Yes, I've gotten the telephone number, I've gotten a connection. We can cut Jorge Vasquez out." And that's precisely what they did.

At that point the conspiracy has begun, because Fernando Gallardo now has the source for brown rock heroin out in California.

What else did we learn from other testimony in the course of this trial about the events in December of 1973?

One thing we learned was that even at this fledgling stage where this rare, new commodity of brown rock heroin was just coming back in small quantities from California, who had the source? Who had access to supplies on the lower East Side? And we knew that the answer is Antonio Morales, Tony the Mechanic. And the reason we knew is because there was a search warrant executed on his apartment in December of 1973, and among the things that were found there was a ba containing a few ounces of brown heroin that had been cut.

You remember, I suppose by now you are probably

71A

experts in the heroin trade, at least enough to know what it means to cut heroin. You mix it with some ingredients. That is a process that requires some implements, common tools: strainers, mixing spoons and so forth. And that also was found in Antonio Morales' apartment.

I am holding up Government's Exhibit 3B, which I believe is the cutting material that was found in Antonio Morales' apartment in December of 1973.

You will also recall that somebody else in that apartment tried to throw some of the heroin out the window, and they took scrapings from the window sill and that came out to be heroin. One bag of heroin was found under the living room coffee table, and in the kid's room they found a quantity of money, which is here, Government's Exhibit 23E in evidence, and the quantity is $28,057 -- I am sorry; $2857.

So by as early as December, 1973 we have Fernando Gallardo establishing his connection in California and we already have Tony the Mechanic getting into the act.

We turn to January of 1974 and we find that Benito Cruz gets cut out by Fernando Gallardo. Gallardo makes perhaps four more trips to California, he gives Cruz the opportunity to go and Cruz balks, and Gallardo from then on continues to go himself and cuts Cruz out of the operation.

And we don't learn what is going on in the operation again until March of 1974. It was at that time that Nino goes back to Fernando and asks him fo some heroin. Cruz is now prepared to become a customer of the Gallardo organization.

Cruz tells him, "I will give you one package," that is a quarter kilogram of heroin, for $10,500, "if you and Orlando Machado sell it together and split the profits." And Cruz agrees to do that.

And so at the Union Street apartment of Orlando Machado, that's in Brooklyn, Fernando Gallardo meets with Orlando Machado, who is the fourth gentleman in, just on the other side of the interpreter, Mr. Schoen, and Orlando Machado and Benito Cruz receive a package of heroin from Fernando Gallardo which Gallardo has cut up into one-ounce packages.

Now, Cruz sells most of that heroin and perhaps only two or three ounces were sold by Orlando Machado, but Cruz and Orlando Machado split the $1800 profit that they made from that transaction.

After that Cruz then becomes a regular

customer of Gallardo purchasing packages of heroin for $10,500. He takes on an individual by the name of Tony Hernandez as his worker, and they pay Hernandez' girlfriend money to allow her apartment to be used as a stach for this heroin.

On one occasion Fernando Gallardo delivers a package to Cruz which Cruz then sells to another individual about whom we will hear more by the name of Ramoncito.

Four packages Cruz receives from Gallardo through his delivery person, whose name is Pumarejo. You will remember later testimony establishes that Pumarejo was an employee of Carlos Gallardo in the juke box repair shop.

During one of those distributions from Pumarejo to Cruz Gallardo is there and takes Hernandez and Cruz to the girlfriend's apartment and he teaches them how to cut the heroin, how to bake the lactose until it is brown but not to hard, and to mix it with the heroin. And despite the cross examination of Benito Cruz on this point it is clear that Benito Cruz did sell the cut heroin and he sold it to an individual by the name of Ramoncito.

Now we come to April and May. It is,

of course, during April and May as well that Cruz is receiving the heroin from Gallardo and from Pumarejo, but as well we see the increasing scope of the conspiracy from yet another vantage point, and that is the vantage point that is provided to us by the testimony of undercover police officer Juan Roman, because it is in April of 1974 that he establishes contact with two members of this conspiracy and purchases brown heroin from them. And the two people I am talking about are, first of all, Jose Velasquez, also known as Cowboy -- I have identified him before -- you will remember on April 11th Juan Roman met with an individual he identified as John Doe 13, John Doe 13 introduces Roman to Cowboy on 9th Street, outside of the social club, and orders two ounces of heroin.

At that time Velasquez tells him the price. It's a certain price for an 8 cut and a different price for a 12 cut. Of course, that was referring to the amount of times you could dilute the heroin.

A certain strength of heroin was more than another strength.

The following night, on August 12th, Roman returns and receives one ounce of heroin in the back of the social club from Jose Velasquez for the price, I believe, of $1600.

The next transaction between the two of them is some time in April -- I'm sorry; some time in May, I believe May 21st. At that time Roman purchases two ounces of heroin from Cowboy at a price of $3400.

Roman also establishes contact with another individual by the name of Victor Medina; and in April and May, on two occasions, purchases heroin from Victor Medina, and, again, it was brown heroin.

Roman also sees Cowboy on a number of other occasions, and in the course of seeing him learns who the people are that he was associating with.

Now, clearly at this point Police Officer Juan Roman had no idea of the existence of a conspiracy or the magnitude of it, but he was able to tell us that he saw Cowboy during the summer of 1974 with Victor Medina, with Moises Maldonado. And you will recall that Juan Roman did eventually purchase narcotics from Moises Maldonado later in August of 1974. And finally from a third person Juan Roman met once and talked heroin with Cowboy in the presence of Angelo Roche.

Now, it is particularly important, that meeting. In spite of the fact that Angelo Roche did not say a word, he was within touching distance of the two of themas Roman and Velasquez discussed a prospective purchase of an eighth of a kilogram of heroin. And I submit to you that that tells you a lot about the trust that had already been established between Angelo Roche and Jose Velasquez, that discussions of narcotics dealings could be done in one another's presence.

And that evidence comes in before we ever learn that in August of 1974 Jose Velasquez is purchasing a home, or trying to, in Santa Isabel, Puerto Rico, the same town that Angelo Roche had a home, it comes in before the evidence provided by Raymond Rivera taht toward the end of August, 1974 William Cortes-Rios introduced him to the customers of the Gallardo organization and he went to a bar and he met together Cowbow and Angelo and Moises.

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And this was, of course, long before the existence of the evidence that was obtained at the time that Angelo Roche was arrested, that is, outside his home was the car that Police Officer Guzman recognized was one that Jose Velasquez had been driving in New York. And, sure enough, inside the compartment of that car were documents, some in the name of Jaime Velasquez others in the name of Jose Velasquez. So even as early as the summer of 1974 we see that Angelo Roche and Jose Velasquez are linked together, and they are linked together in a manner so that they can discuss freely with one another narcotics transactions.

Now, in June we learn of Fernando Gallardo's first attempt to groom somebody to assume temporary responsibility for the organization that he has set up. He introduces Nino to a person by the name of Robert. Nino purchases an eighth of a kilogram from Robert. That is the incident where the girlfriend of Tony Hernandez flushes half of it down the toilet, and Nino comes back to Fernando Gallardo and says, "I lost all of the heroin." And Fernando says, "You still have to pay me $10,500." Apparently Robert didn't work out, because very shortly after that Fernando Gallardo introduces Cruz to a second individual who is going to assume control, and that is William Cortes-Rios.

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Now, that introduction takes place in the Slugger Ann Bar. Very shortly after that William Cortes-Rios and Fernando Gallardo take Cruz over to a social club on East 13th Street. That is the social club that was run by Luis Ramos, also known as Indio. On that occasion Cortes-Rios and Fernando Gallardo told Cruz, "When you want to get in touch with Cortes-Rios you come here and you ask for him here at Indio's social club." Once those connections were made Fernando Gallardo left temporarily for Puerto Rico. You recall that scene, where he was moving out of the apartment on Stanton Street, I believe it was, perhaps by this time East 12th Street. And Cruz is there to help with the luggage. William Cortes-Rios drives up in a car to take him to the airport and Fernando tells Cruz as to the luggage, "Take care, be careful with that, because there is $200,000 in it." And as though that were not enough, to take $200,000 to Puerto Rico, before they left, Martha Machado throws a paper bag out the window to Fernando Gallardo and Fernando Gallardo tells Cruz, "There is $35,000 in this paper bag." So as early as June of 1974 this conspiracy is becoming immensely profitable and there are tremendous revenues being generated by the heroin that is being brought back from California.

Now, in June of 1974 Cruz purchases twice from

William Cortes-Rios, and on both of those occasions he reaches Cortes-Rios by going to Indio's social club and telling Indio he wants to see Cortes-Rios. Cortes-Rios gets back in touch with him and on two occasions delivers to the beauty parlor packages containing quarter kilogram quantities of heroin, and eventually Cruz pays back $10,500 for each of the packages and a little extra to make up for the lost package that had been flushed down the toilet, although he never completely makes payment for that. That is the end of Benito Cruz's participation in the Gallardo organization for now, a period that will extend to six months, because Cruz goes back to Jorge Vasquez and begins to make the trip to California and cuts around the Gallardo organization.

But we still see the operation of the Gallardo organization in August of 1974 from the testimony of Raymond Rivera. You will remember throughout the period Raymond Rivera has been working in a mill down in Ponce, Puerto Rico, but about the beginning of August, 1974, William Cortes-Rios, his compadre, come down and talks to him and presents him with a proposition of coming into the organization, selling heroin and making a lot of money. Rivera considers it for a few days. Cortes-Rios returns and Rivera assents, and a meeting is set up in Bamon, Puerto Rico, at the Rexville, Bayamon, Puerto Rico, home of Fernando Gallardo and Martha Machado. And it is at that meeting where Fernando Gallardo and Martha Machado are present, Carlos Gallardo is present, Wilfredo Machado is present, and, of course, William Cortes-Rios and Raymond Rivera are present, and during that meeting Rivera is told that his part in the conspiracy will be to go to California to pick up heroin to bring back and sell to regular customers of the organization. He agrees to do that, and he is, in turn, accepted into the organization.

Within a few days he is given $500 by William Cortes-Rios and he is instructed to go up to New York, which he does. We also know what some of the other people were doing at this time. Angelo Roche was down in Ponce, Puerto Rico, signing a bill of deed, and I think that was about August 12th. We know that on August 15th, I believe it is from the 15th to the 22nd, Cowboy is down in Ponce, Puerto Rico, making a cash down payment to the architect for his home to be built in Santa Isabel. We know he returns to New York the next day, because that is when he is arrested for the sale of heroin to one, Roman, and we know he is free on bail the following day.

On August 24th we know that Rossy is still at work in August of 1974, because that is when he purchases

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heroin from Moises on two occasions, and we know that Ramon is now just entering his second work release program. He has been in jail throughout the period of time; he has just now come back to New York where as part of the work release program he begins to work in the grocery store in Suffolk Street, but he has not yet begun to deal in heroin again, that that will be put off for another few months.

We know that Raymond Rivera and William Cortes-Rios were both back in New York by August 17th, because that is the date they went down to Langhorn, Pennsylvania, and William Cortes-Rios bought that used Dodge truck for $2,000 cash. And we know that some time in August Raymond Rivera is called upon at the Slugger Ann's bar to make his first trip to California. Fernando tells him that William Cortes-Rios will show him the way, that he is to watch Cortes-Rios and learn how to make these trips to California. And within a day or two Cortes-Rios takes him to Kennedy Airport. Cortes-Rios has the piece of Samsonite luggage that they call Baby -- and it is sitting there at counsel table, Government's Exhibit 1. And he has many thousands of dollars in Baby. They get to California, they take a taxi to the Garvey Motel in Monterey Park, California. Cortes-Rios goes outside to a public pay phone, right outside the motel, makes a telephone call, and shortly after that Raymond Rivera meets the individual that he will come to know as Hector, the Mexican. Hector takes the money from Baby, puts it in the shopping bag, leaves and returns, and when he returns he has in his shopping bag 11 quarter kilogram packages of heroin. That is not quite three kilograms. He drops it off and leaves. Raymond Rivera and Cortes-Rios wrap it up in the bed sheets to keep the scent of it down, pack it into Baby, and they return to New York.

Now, upon their return to New York City that night, the first place they bring the heroin to is the Slugger Ann tavern on the corner of 12th Street and I believe it is Avenue D or Avenue C. Then they take it around the corner to the 12th Street apartment of Paquito Machado, that is, the apartment primarily that was used as the stash for Raymond Rivera's heroin. Rivera gives a package to Paquito; he also gives a package to Cuba, who is also there, and he goes to the apartment of Rose, and he waits, and it is the next night that he is taken around by William Cortes-Rios to the customers of the Gallardo organization, or, at least, to the first run of customers. Cortes-Rios takes him to a bar on Avenue D and 9th Street. He introduces him to three individuals there--

that is, Jose Velasquez, Angelo -- Raymond Rivera knows him as Angelo, the Old Man, not as Angelo Roche or as Angelo Roche Gonzalez. He identified in court Angelo Roche. And finally an individual who is introduced to him as Moises. Moises and Angelo order heroin on the spot. Cowboy, apparently, has some problems with the price, and he tells Raymond to come back and see him later. Cortes-Rios and Raymond Rivera then go to an individual by the name of Ritchie Tirado at Ritchie's 6th Street apartment. At that time Tirado orders four and a half ounces of heroin at a social club up on 9th Street, and that is still back in the same vicinity where Angelo and Moises were together with Cowboy. Rivera is introduced to a gentleman by the name of Victor, also known as Vitin. Victor orders one package of heroin.

Now, at that point Rivera goes to meet an individual who will become his partner, so to speak, Chequi, Jose Luis Iglesias, and he tells him that he is going to be distributing heroin, he is going to need somebody to help, he is going to need a safe stash place, and he will come back to Chequi later. He continues his rounds. He picks up seven or eight packages of heroin from the stash at Paquito's apartment and he makes deliveries to Angelo at the building on East 9th Street, he gives him two packages of heroin, and, members of the jury, that particular distribution and the possession of that heroin by Angelo Roche is a substantive count charged in the indictment. I believe it is Count 4.

Rivera delivers a pack to Moises at the apartment a couple of floors before Angelo's. He delivers half of a pack to Ritchie Tirado at 6th Street, at the 6th Street apartment, and delivers a pack of heroin to Victor, also known as Vitin. He receives some payment, but not all payment. Angelo pays him $24,000; Moises pay him $12,000; Vitin pays him $12,000. So he has received $48,000. But the half a package that he gave to Tirado he gave on consignment. Rivera drops the $48,000 off at Paquito's stash and he goes back to meet with Chegui.

With Chegui at the time was an individual by the name of Norberto. Chegui, Norberto and Rivera sit down and they talk about how they will work together in future trips, and at that time Chegui says that he has a safe apartment that he can use, and the apartment that he is talking about is 110 Columbia Street, the apartment of his mother in the project.

Rivera goes over to Rose's house, he takes a bath, and then he goes back to see Cowboy again at the bar at Avenue D and 9th Street. Cowboy orders two packs at that time. Rivera goes to Paquito's apartment, he picks up the two packs, and returns to the bar. He gives the two packs to Cowboy in the bar. Cowboy walks outside to his Monte Carlo car, opens the trunk, takes out $24,000 and gives it to Raymond Rivera. That is charged as a substantive count in the indictment, Cowboy's possession of that quantity of heroin.

You have heard on cross-examination sometimes of Raymond Rivera's inability to be specific as to the actual amount of heroin that he had received on this occasion. But you may note if you examine the indictment that it charges only that Cowboy received approximately one quarter kilogram. So that if there is a discrepancy or if you find a discrepancy in the testimony, you can be sure that the indictment charges a lesser quantity of heroin or the least quantity of heroin that is mentioned in the evidence in this case.

Now, all of the money from the sale of this heroin was eventually brought together in Paquito's apartment and was counted. Again, Fernando Gallardo was there. Raymond Rivera received approximately $7,000 for his work, and he tells Fernando that from now on he is going to use Chegui's services.

Within three or four days he is contacted and told that he is going to make a second trip to California, and this one he will make alone. Now, according to Raymond Rivera's recollection, this second trip took place toward the third week in August, and it was also Raymond Rivera's recollection that, counting back, the first trip took place some time around the second week in August. Members of the jury, the government contends that the trip took place, actually, the second trip on September 3rd and that Raymond Rivera's recollection is off by a couple of weeks in this regard. The reason the government suggests that to you is because of the telephone that shows a collect telephone call from California to Rivera's sister-in-law's house on September 3rd. You will remember that Raymond Rivera when he got to California on the second trip, among other things, went out to that phone booth outside the Garvey motel and called his wife at his sister-in-law's place in Caguax, Puerto Rico. You can examine the October, 1974, telephone record of Aurora Ramirez, that is, the sister-in-law, and you will see that there is only one telephone call, a collect call, that could possibly fit into these particular facts, and the date of that call is September 3rd. So we know that on September 3rd Raymond Rivera made his second trip. If you count back, his first trip must have been still right at the end of August.

On the second trip Rivera met with Hector, the Mexican, and he picked up 14 packages of heroin. He does not recall whether he brought any money out on the trip or not, but he brought back 14 packages of heroin. And, of course, it was brown rock heroin.

When he returned to New York he took the heroin immediately to 110 Columbia Street, that is, Chegui's mother's apartment. Chegui was not there, but he later returns, and Raymond showed him the quantity of heroin, and Chegui marveled at the amount of heroin he saw.

On the following day he and Chegui made a round of the customers, and in the course of those rounds they sold two packs to Angelo Roche at his 9th Street apartment. Members of the jury, that is charged as a substantive count in Count 8 of the indictment. There were two packs distributed to Cowboy, I believe again at the bar on Avenue D and 9th Street. That is charged as a substantive count, Count 9. Raymond Rivera also distributed one pack to Moises, the customary half a pack to Ritchie Tirado, and one pack to Victor, also known as Vitin. And on the second trip there were other customers that Raymond Rivera got to know. One of those customers was Ricardo Garcia and his wife and his daughter, and Raymond Rivera referred to them as the Garcias.

You heard Ricardo Garcia, who is also a defendant, who took the stand and told you, yes. he did participate in the conspiracy as charged in the indictment and he did meet with Chegui and Raymond Rivera as Rivera testified. On that occasion Garcia received half a pack of heroin. Rivera also met an individual he knew as Jose Luis, the Old Man, and also Ismael, another individual, last name unknwon. The two of these people received one and a half packs of heroin. As well, Raymond Rivera met an individual known as Gilbert, and another person in his apartment he believed to be his partner, Angelo, not Angelo Roche, but a different Angelo. These individuals received a total of a half a package of heroin.

Finally, at the direction of William Cortes-Rios, Raymond Rivera went to see Indio at his 13th Street social club. Indio asked him what the price was and he was told $12,000. Indio said, "I don't like the price. I am going to see William Cortes-Rios about this." And Rivera says, "I am setting the price; I say $12,000." So Indio settled for that and ordered two packs, and, of course, Rivera goes with Chegui to pick up the heroin and return to the social club, where he delivers the two packs to Indio.

I should bring your attention to the fact that that distribution is also charged as a substantive offense, and it is Count 7 of this indictment.

The following day Rivera receives a visit from Tony, the mechanic, that is, Antonio Morales, at Chegui's East 3rd Street apartment. And at that time -- it was some time in the afternoon -- Morales orders some heroin on consignment, and, precisely, one package of heroin. Rivera didn't have the heroin at that apartment. He went to Chegui's mother's place on Columbia Street, returned with the heroin, and gave it to Antonio Morales on consignment. Within five or six days Morales had paid him off at least $10,000 of the purchase price.

All told, Rivera collected well over a hundred thousand dollars from the distribution of that heroin. There took place the customary counting of the money at Paquito's apartment, and Fernando Gallardo paid Rivero $15,000 approximately of that sum for his participation. I should point out, by the way, that the distribution to Antonio Morales in the course of this is also charged as a substantive crime, and that it is charged in Count 15 of this indictment.

Now, upon completion of the second trip and the distribution of the 14 packages in early September, Rivera makes a visit down to Cagaux, Puerto Rico, and stays there about ten days. He is not sure when the incident takes place

mmhh 14

where he goes with William Cortes-Rios to the Bayamont Federal Savings Bank. He believes it at this time, but he does remember for sure that it is during this period of time, this stay in Puerto Rico, when he purchases a new home with the money that he has made from his first two trips to California, and remembers that he purchases the home some time in mid to the late part of September. So we know now approximately when the second trip finished and the third trip began, and I will get to the third trip in a moment.

During this stay in Puerto Rico, and probably in addition to the purchase of the heroin, Raymond Rivera makes two visits to the Bayamon Federal Savings and Loan Association, both with William Cortes-Rios. The first was a very brief visit, where Mr. Rios says, "Mr. Rivera, this is Mr. Abrew; Mr. Abrew, this is Raymond Rivera, he is a good friend of mine, and he will be bringing money, too." This was followed by a second visit, and this time Cortes-Rios actually had $50 in cash with him, and there was the counting session upstairs at the bank that took perhaps an hour, and when that was finished, Maria Sosa, the bank secretary, typed up a savings certificate and gave it to William Cortes-Rios. You heard that not only from Raymond Rivera, you also heard that from Mrs. Sosa.

Following this stay, toward the latter part of September, Rivera comes back and he makes his third trip to California. You remember that is the trip where he stayed for a couple of days at the Garvey Hotel, that there was a mixup as to the name under which he registered, that he made several telephone calls to Pacquito's apartment and is told to wait. Eventually, Hector shows up and with Hector are two gentlemen, one of whom is Fernando Valenzuela, and this is the first time when Raymond Rivera actually meets the head of the organization in California. They work out the problem of the registration at the hotel. They get everything smoothed, and Fernando tells Raymond Hector will be back with the heroin tomorrow. And the following day Hector shows up with 16 packages of heroin, that is, four kilograms. Rivera returns to New York and he distributes the heroin to his usual customers. I won't go through each one of the descriptions, but you will recall that included in this group if Jose Velasquez, Cowboy, Angelo Roche, Indio, and Tony the mechanic, as well as a few new customers. You will remember that Luis Rodriguez was brought to Raymond at Chegui's apartment, and Luis Rodriguez had some of his partners, Puton and Pichi. You know that not only because Raymond Rivera testified about it, but because Luis Rodriguez took the stand and told you about the entire meeting, word for word, exactly, his rendition of the meeting is the same as Raymond Rivera's. It was decided that there would only be half a pack distributed to Rodriguez, not the full pack that Rodriguez wanted. Luis Rodriguez, Puton and Pichi went down to Puerto Richo and distributed the heroin to the connection down there, the outlet they had, the Avilis Bros. All told, Raymond Rivera personally collected approximately $160,000 for the heroin distributed this time. He received for his services $20,000 from Gallardo. And this brings us now into the beginning of October.

Within three or four days of the completion of this third trip, Rivera is told by Gallardo that he is to make a fourth trip, but this fourth was to be different from the other three, because the heroin was not to be distributed in New York by Raymond Rivera. Gallardo at the Slugger Ann Bar told Rivera, "I want to help Carlitos out; he is hard up for money and I want to give him an opportunity." And, of course, Raymond Rivera understood which Carlitos this was, because he and Carlitos had worked together as press operators years before. Rivera went to California and picked up ten packages of heroin and returned, and when he got back to New York whom did he call, but Carlitos, and they set up a meeting at the Slugger Ann Bar. Carlitos told him to take the heroin over to the social club of Luis Ramos on East 13th Street. Rivera drives the heroin over there, Carlitos walks. They meet at the social club and Carlitos takes the ten packages of heroin.

Now, Chegui is supposed to help distribute this heroin. So Rivera gets Chegui, brings him back to the social club and they sit down and they discuss exactly how it is that Chegui is going to help, what is in it for Chegui, and it is decided that Chegui will get $500 for every pack that he sells and he will sell to the regular customers of the Gallardo organization. With those assurances set up, Rivera returns to Puerto Rico and stays down there for several days. But after a few days he receives two telephone calls. The first time is from Carlitos complaining that Chegui is not helping him. Rivera asked him, "How much heroin have you sold?" He says, "Half of the eight packs." Rivera says, "That is not much; you should have finished those packs by now." Carlitos says, "Well, we are having trouble with Chegui."

The next day Chegui calls and tells Rivera about the troubles he is having with Nino and Carlitos, that they are trying to raise the prices to customers, that the customers are dissatisfied. "Raymond,come back." And what does Rivera do? He calls the people higher up in the organization; he calls Fernando Gallardo up in New York. He calls from his sister-in-law's house William Cortes-Rios in Bayamon, Puerto Rico. We have the telephone records of the sister-in-law. We know precisely when this took place. And it is of some significance, as I am sure you can appreciate from some of the evidence in this case, exactly when this took place. Again, the October phone bill for Aurora Ramirez shows you two telephone calls to the telephone of William Cortes-Rios, and the telephone calls are dated October 6th and October 8th. Shortly after this, Rivera comes back to New York and first he meets with Chegui, then he meets with Carlitos and Indio, and then he gets them together again at a bar across the street from Chegui's apartment, known as the Old Reliable Bar. There is some significance to that, because when Jose Luis Iglesias was arrested several years later, one of the items found in his apartment was a business card for the Old Reliable Bar.

At the Old Reliable it is decided that Chegui will not continue to help Carlitos and Indio; Carlitos and Indio have to do it for themselves; they are to do it quickly and they are to return the proceeds of the heroin to Rivera, which they do. Rivera then passes along the money to Fernando Gallardo and he receives for his effort

$500 for each of the ten packs, $5,000. You can come to this conclusion from the October 6th and the October 8th dates and put it together with the testimony and you will realize that this entire operation finished some time right in the middle of October, perhaps the 15th or the 16th or the 17th, certainly by the 21st, because that is when Carlos Santiago returned to Puerto Rico to fix up his house.

We know on October 23rd he ran up that $144 hardware bill which he has not been able to repay in three years. We know it is ten days after that that he withdrew $2,000 from the bank to pay off his laborers. We know he was in Puerto Rico the latter part of October, and it was in the latter part of October that the fifth and final trip to California was arranged for and begins.

We know, for instance, from one of those telephone records that I read to you ad nauseam last week that on October 30th the Slugger Ann Bar received a telephone call from California from the telephone at the home 810-1/4 Edgeward Avenue. I don't expect that you will recall exactly the significance of this address, but I will tell you that that is the place where Agent George Hoekler in California seized 42 pounds of heroin in November of 1975. It was one of the places that had Fernando Valenzuela's telephone

mmhh 20

number and other identifying features to tie it into the Fernando Valenzuela organization. A telephone call was made on that telephone on October 30th to Slugger Ann, and by October 31st Raymond Rivera had made his trip to California. On November 1st he was still there and he sent some postcards to his wife and one of his sons in Puerto Rico. They are postmarked November 1st. You saw those postcards. You can look at them of course, again, during your deliberations. So certainly by November 1st, Raymond Rivera is in California for his fifth and final trip. He waits several days before anybody shows up. Nobody from California shows up. Finally, Fernando Gallardo shows up. Fernando Gallardo makes a phone call out of the presence of Rivera, comes back, and they both go back to the Los Angeles area. Rivera moves from the Garvey to the San Carlos Hotel, right across the street from the Biltmore, where Gallardo is staying, and there ensues a long wait, and then Hector shows up and picks up over a hundred thousand dollars from Fernando Gallardo, returns a few hours later with the heroin. The heroin is wet. So it has to be dried out. Gallardo calls somebody and complains. It is set up for the heroin to be dried. Hector, Fernando Gallardo and Raymond Rivera, Fernando Valenzuela, as well, and somebody else drive to a home in the Los Angeles area, and all night long they spend drying out pack after pack after pack of the brown rock heroin, until approximately 35 packs are dried out by morning. And it is that next day that Fernando Gallardo and Raymond Rivera returned back to New York with the 35 packs of heroin. That is far in excess of any quantity of heroin that Raymond Rivera had been handling before. 35 packs of heroin is approximately 9 kilograms. It has a value of close to half a million dollars wholesale in New York City. And where is this quantity of heroin taken? It is taken directly to the George Washington Hotel. Raymond Rivera testified that Gallardo checked in and that the attendant at the desk said, "Your room is such and such, Mr. Zayas." And if you consult the hotel registration records of the George Washington Hotel, particularly the one which has been marked as Government's Exhibit 25B, you will see that on November 7th overnight to November 8th there is registered an F. Zayas of 127 Stanton Street. This is just one of the many, many registrations in the name of F. Zayas or Frank Zayas or Felix Zayas,all with variations of the same address. There is one, for instance, October 31st, a few prior, again, F. Zayas, 127 Stanton Street. The telephone record for that bill shows that the telephone call was made on November 4th to a telephone number which by another stipulation is clearly the telephone number of Gallardo's Rexville home in Bayamon, Puerto Rico. So this is all clearly related to the Gallardo organization, just the way Raymond Rivera testified it was. And if you look at these registrations, you will see that whoever was there paid through November 4th, and if you put that together with the November 7th and the testimony of Raymond Rivera and the telephone call from California on October 30th, it becomes clear, I think, that Fernando Gallardo was the one who was checked into the George Washington Motel on October 31st. Days went by. He went to California, and so he checked out of the George Washington Hotel, that is, let's say, around November 4th. He goes out to California, meets Raymond Rivera, and they come back and they check in together, November 17th, exactly as Raymond Rivera testified.

Now, upon their return to New York they are checking in at the George Washington Hotel. Rivera leaves and begins to distribute much of the 35 packages of heroin. Again, I won't go through all the testimony about those distributions. But Rivera sold to many of the regular customers, and, particularly, some of them were Cowboy, Jose Velasquez, Angelo Roche, Luis Ramos, that is, Indio, the Garcias, Luis Rodrigues and his partners, Puton and Picul, Moises, Victor and Gilbert.

Rivera was also told around this time -- we are now in November, 1974 -- that he would not be making any more trips to California; he had to cool off. But he was told who was going to begin to make some of the trips, and he was told that Wilfredo Machado, one of the Machado brothers, would.

Now, also during November bank records from the Bayamon Federal Savings and Loan indicate that William Cortes-Rios began to open up a safety deposit box and carry it through for many months at the Bayamon Bank. We also know that during November Raymond Rossy became active in the conspiracy.

The brother-in-law, who had owned the grocery store, died. And he decided to go back to earning money through heroin. So he meets with Fernando Gallardo. Gallardo will not give him heroin on consignment. So he goes and he borrows $7,000 from his girlfriend, Nelsa, $2,000 from his father in Puerto Rico. He puts this together and gives it to Gallardo and Gallardo gives him a package, and from then on in he earns enough money from that pack to buy a second pack and then a third pack, and then he begins to escalate on into buying quarter kilogram quantities to half kilogram quantities, and in December he purchases one full kilogram, just before Fernando Gallardo goes away to Puerto Rico on a Christmas vacation.

We also heard about the search of an apartment on November 27, 1974, right in this period of time. And whose apartment is it? It is the 12th Street apartment of Paquito, the one that had been used as a stash. At least, that is the way Raymond Rivera told it. Did it bear out, did it pan out that it was a stash when it was searched by the agents in November, 1974? The answer is yes, it did, because found in that apartment was one pound of heroin, that is, half a kilogram, and $40,790, and a variety of cutting paraphernalia which are contained in this box -- I am corrected -- that cutting paraphernalia is something else -- but there was a variety of cutting paraphernalia.

That also is the occasion when Cuba rings the bell while the officers are there, comes up with about $3000, I believe it was, in his waistband. And who is waiting for him downstairs but Anthony Rodriguez, Little Tony, waiting in the car that Cuba has the registration for.

We move on into December of 1974. Rossy continues to buy heroin from Fernando Gallardo. Cruz now also begins to come into the picture, tries to reestablish contacts with Gallardo, and eventually the idea is that he will take over in January for Gallardo.

He is with Gallardo on a number of occasions when narcotics or narcotics-related activities occur. And I am thinking primarily about the testimony relating to two of these.

One one occasion he is with Fernando Gallardo in a bar with the sawdust all over it and in walks Luis Ramos, Indio, with a paper bag, and the paper bag contains, as I recall, $25,000.

Shortly after that Gallardo was present with Cruz and met Gilberto Torres, that is, Fabian Rodriguez' cousin. And at that time Fernando Gallardo delivered a kilogram of heroin to Gilbert.

You also remember that is the time when

Gilbert tries to bargain down the price of a kilo, and Gallardo says, "I'm thinking of raising the price, not lowering the price."

And it is decided that Gilbert would be allowed to purchase heroin for $48,500 for every kilogram as long as he purchases a kilogram and a quarter or a kilogram and a half the next time.

On December 17th Raymond Rivera recalls that he and his children left for Puerto Rico. They had just gotten out of school.

It is clear that on that day, when he got down to Puerto Rico, he made a telephone call, so he certainly was in Puerto Rico on that day.

Government's Exhibit 28A is the telephone record of his sister-in-law, and on the entry for December 17th is a telephone call to an individual by the name of Francis Baez.

You will remember Mrs. Sosa testified that Francis Baez was the assistant manager of the bank. And this telephone number is his business number at the bank.

Also around this period of time, back in New York, Police Officer Burbage conducts a search of the apartment of Felix Machado, another brother of

Martha, and at that time he finds two small bags of heroin, $2500 in cash, and he finds the residue of heroin that had been flushed down the toilet bowl.

And we come as well, in the latter part of Christmas, the latter part of December, to the Christmas party in Caguas, Puerto Rico. Raymond Rivera throws the party, and in attendance are Benito Cruz -- you will recall that is the first time that Cruz and Rivera met. And Cruz is told by Fernando Gallardo, for instance, that "Raymond has made trips for me in the past; in fact, he bought this house with the earnings from some of his trips."

Also there is William Cortes-Rios, Chegui is there, of course Fernando is there, Raymond Rivera is there, other people are there, but that core has a meeting off to the side of Raymond's house and it is decided that Benito Cruz will take over in January and will distribute heroin for Gallardo.

Back in New York Cruz and Gallardo arrive before New Year's Eve, certainly. I believe it was Cruz' testimony that he arrived back on the 28th of December.

Gallardo begins to phase him into the operation. He tells about the answering service that he has set up. Some of his customers get in touch with him by calling the answering service and leaving a message for Mr. Roberts.

He takes Cruz to a meeting with Fabian and Gilbert, and there I use the term "meeting" guardedly.

What actually happened was that there was a meeting on the street, right on East 3rd Street. Gallardo had a package containing a kilogram and a quarter, that is, five packages of heroin. He gave the package to Fabian. It was at this time, I believe, that Cruz was first introduced to Fabian as Gilbert's cousin, as a person who worked in the post office.

Fabian takes the quarter -- the kilo and a quarter of heroin and a conversation ensues, and Cruz is getting very nervous because they are standing out here on the street and there is all of that heroin and they are just chatting away.

Eventually, Gallardo and Cruz return to Gallardo's 3rd Street apartment and Gallardo tells Cruz exactly what was in the package, how much heroin.

That, ladies and gentlemen, is a substantive count in this indictment, possession by Fabian Rodriguez of that heroin, and it is count 20 of this indictment.

We come to New Year's Eve, and Raymond Rossy tells us about a party that he attended with his girlfriend Nilsa. And who do they meet at that party but Fernando Gallardo, Martha Machado and two individuals who are often seen together in the course of this evidence, Cuba and Little Tony, Anita Rodriguez.

It is during this party that Rossy hands the keys to his car to Fernando Gallardo, tells him there is a quantity of money in the car, that he wants a kilogram of heroin.

Gallardo leaves, comes back, hands the keys back to Rossy, and sure enough by the end of the evening when Rossy has left he finds a kilogtam of heroin in the trunk of his car.

And we have now arrived in January, which may be, at least based on the evidence in this case, one of the busiest months of this conspiracy.

Benito Cruz takes over for Fernando Gallardo on the 5th of January, or approximately that date, and he takes over for two weeks. He has as his helpers two individuals known as Eddie Baez and one is Eddie Valon. And with their assistance he sells approximately 17 kilograms of heroin at a value of approxiamtely $850,000.

To Raymond Rossy Cruz sells four or five kilograms and he charges Rossy on each occasion $50,000 per kilogram.

To Raymond Rivera Cruz sells four packages.

You will remember that Rivera returned back to New York with his children so they could start school on November -- I am sorry -- on January 7th. After that he meets Cruz in Gallardo's 3rd Street apartment. The product of that meeting was that Nino gave four packages at the apartment to Rivera to distribute.

You will remember that Rivera didn't make payments back to Cruz for any of this heroin, but he paid Fernando Gallardo directly.

Cruz also made deliveries to Raymond Rivera on at least two other occasions, one of which was out near the Brooklyn stash of Cruz on Wilson Street. He drove Rivera out there, ran into the bulding, didn't let Rivera up to the stash apartment, and came back down with two packages. When I say packages, it is somewhat unusual, because these packages were not the normal nine-ounce packages, these were half-kilogram, 18-ounce packages, and he gave them to Raymond Rivera.

Rivera testified when he received these packages one of them he sold, and he sold those packages, broke them down and sold them to Indio, that is, Luis Ramos, and Tony the Mechanic, Antonio Morales, and he gave the other 18-ounce package to Chequi, and Chequi did with it what he would.

On a third occasion Cruz testified that he gave Rivera heroin near the other stash which was located in Manhattan on 15th Street.

Some of the other customers during January were Puton -- you remember from Louis Rodriguez Puton was his partner. Puton received one package of heroin from Cruz near a garage on East 15th Street.

Ramoncito -- again his name comes back -- receives a package from Cruz at Fernando Gallardo's 3rd Street apartment.

The person Victor, who is also known as Vitin, receives on two separate occasions two packages of heroin.

Little Tony also purchased heroin at this time, that is, Anthony Rodriguez.

You will remember that he ordered a package from Cruz and Cruz went to Gallardo and said he didn't want to sell heroin to Little Tony. Gallardo said, "Well, he's already paid me $6000, so you are going to sell him the package of heroin," so Cruz sets up the deal to go down outside the stash in Brooklyn.

Cruz puts the heroin in a car, has Eddie Valon stand there with his hand on the roof of the car when Little Tony arrives, Cruz watches from the apartment window, Valon shows Little Tony where the heroin is and walks away, Little Tony goes into the car, takes the heroin and leaves, and eventually, a day or two later, repays the remaining $6000 for that package of heroin to Cruz, I believe it was, back in Brooklyn at the Roebling Liquor Store.

Cruz also distributed heroin to Indio, Luis Ramos, and he sold on four different occasions one-half-kilogram quantities of heroin, charging $25,000 per half kilogram for a total of $100,000 of heroin sold to Indio in January.

The first time you will remember Eddie Baez delivered the heroin he put it into -- he was sent by Cruz to deliver the heroin to Indio's apartment and Cruz later came along just to check up on it.

You will recall, though, that on that occasion Indio was not in the apartment.

The second time Cruz put heroin in Indio's car out in Brooklyn at the Parkside Bar, and that was an occasion where Indio went into the bar, Cruz put the heroin into his car, walked back into the bar and told Indio it was okay.

The same scenario was repeated at the Roebling Liquor Store where Indio went out to Brooklyn, went into the liquor store to buy liquor, Cruz put the package in Indio's car, went into the liquor store and the deal was down.

Finally, the fourth time Cruz handed the package to Indio right out of his car. Cruz was parked at the time on First Avenue in Manhattan, between 13th and 14th Streets.

Those are the four transactions totaling $100,000 with Luis Ramos in January.

Fabian and Gilbert were also active in January, and on four separate occasions Cruz met with both Fabian and Gilbert together for narcotics transactions.

One of them is mentioned as a substantive act in this indictment, and it is count 22 of the indictment.

On that particular occasion the meeting takes place at McDonald's on 23rd Street in Manhattan, and the heroin was passed directly from Benito Cruz to Fabian, and it was the next day or the following evening, I believe, when Fabian returned with the purchase price, which was $48,500, and delivered it to Cruz.

Just to go briefly through the other three sales, on a second occasion Eddie Baez put half a kilogram in Gilbert's car while Cruz and Gilbert and Fabian were eating in a restaurant in Manhattan.

On a third occasion one kilogram passed between Cruz and Gilbert while Gilbert, Fabian and Cruz were at McDonald's on Broadway and 17th Street.

And, finally, the fourth occasion was out in Brooklyn. It was the last sale of the month to Fabian and Gilbert. It was for the most amount of heroin, a kilo and a half. It took place at the Roebling Liquor Store. And Cruz was never paid for that heroin, it was an IOU that he passed along to Fernando, better than $70,000 IOU.

In fact, when Cruz turned the reins back to Fernando there were several IOU's that he passed on to Gallardo, people from whom he had not collected money.

He had distributed 17 kilograms, he had three kilograms left in the stash apartment in Brooklyn at the time he turned the reins back over. That is a total of 20 kilograms. Those kilograms came from California in two distinct shipments. The first one was a shipment of 7-1/2 kilograms, and it was a trip that was made by Wilfredo Machado.

You will remember that Cruz was not told about the trip in advance, but when Wilfredo was supposed to have returned from California, Gallardo picked him up and they went to two hotels looking for Wilfredo to see if he checked in, and, significantly, one of those hotels was the George Washington Hotel, another hotel was the Rutledge Hotel in Manhattan.

Wilfredo had not checked in yet, and Cruz learned later the reason was that he had been held up in California; I mean held up figuratively, not literally.

He did return and the 7-1/2 kilograms that he returned from California with were put at the disposal of Benito Cruz. And he worked his way through those kilograms very quickly, and toward the end it was necessary to send someone else to California to pick up another shipment. This was to be a shipment of 12-1/2 kilograms. And Gallardo told Cruz to get Orlando Machado ready for that trip.

Ladies and gentlemen, this trip is also a substantive count in this indictment, and it is count 23.

You will remember that Cruz got Orlando to get a haircut, bought him a new change of clothes, bought a suitcase and packaged it with $230,000, got the plane ticket and made arrangements for Eddie Valon to drive the two of them to the airport where he personally put Orlando Machado on the airplane for California.

He was called up the next day and told to meet the plane when it came back, but he missed connections, he didn't arrive in time. He went and he told Carlos Gallardo, "I couldn't find him."

Carlos said, "Don't worry about it."

And it wasn't until later that he learned what had happened, when he spoke to Fernando Gallardo at the 3rd Street apartment. Shortly after he learned that Gallardo, Martha Machado and Orlando Machado had returned on a flight that got into Kennedy, I guess it was, 9 o'clock. Orlando Machado had gotten sick on the flight, and so Fernando Gallardo had to go to the baggage claim check and take the heroin off the flight himself.

And it was at that time that Cruz learned that this Fernando Gallardo also told him to send $5000 to Orlando as his part of that trip and in fact Cruz only sent $4600, and he sent it by way of Eddie Valon.

As I said before, according to the evidence the value of the heroin sold was approximately $850,000. Only $500,000, or approximately that sum, was actually collected by Cruz, and there were IOUs left over.

The last time that Cruz delivered money to Gallardo for this heroin was approximately the 18th of January, about two weeks after he had started.

Cruz took, you remember, a boxful of money, it was about $59,000, to the apartment Gallardo on East 6th Street, and at that time he interrupted Gallardo while he was separating the $50 bills and the $100 bills from a vast array of money in the apartment which Cruz estimated to be somewhere around a million dollars.

At that time Cruz told Gallardo about the three kilos left in the Wilson Street stash, he gave him the keys to the apartment and as well he gave him some pieces of paper that he had written his accounting on, who the customers were that he distributed heroin to, who still owed what.

Now, that took place at the East 6th Street apartment around the 18th of January, and there are perhaps five or six or seven slips of paper as Cruz recalls.

We know that within ten days Fernando Gallardo was to be arrested by Police Officer William Burbage.

On the 28th of January Burbage is conducting surveillance, and he observes the liquor store at Prince and Elizabeth Streets, I believe it is 15 Prince Street, and he observes a long conversation between Martha Machado, Carlos Gallardo and two other individuals, Cuba and Little Tony.

The following day he is back in front of the same liquor store and he observes exactly the same thing, Martha, Carlos, Cuba and Little Tony again together in conversation. It is that night that he arrests Fernando Gallardo on 34th Street.

Following that arrest -- and we are now into the early hours of the next day, which is January 30th -- Burbage and other officers search the East 3rd Street apartment of Fernando Gallardo. Gallardo is there and an assistant district attorney and a defense attorney is there, and they conduct a search. And what do they come up with? They come up with

$45,000 in cash, $23,000 of which was in a shopping bag, another 12,000 was in an envelope in the closet; they come up with photographs of Gallardo himself, of Martha Machado with Cuba, and they also come up with two sets of customer lists. And one of those of particular interest is 6D, because it is four of the sheets of paper that Benito Cruz had given perhaps ten days earlier in Gallardo's 6th Street apartment. It is the accounting.

So we have, at least in part, a customer list. We have in the hieroglyphics that Cruz used quantities of $24,000 of heroin being given to Gilbert and an indication that it was paid. We also have his hieroglyphics for Raymond Rivera, Raymond Rossy, Indio, Vitin, Ramoncito. Very compelling proof, because it doesn't come from Cruz through Fernando Gallardo.

It was not seized from Benito Cruz, it was not prepared by Benito Cruz after he agreed to testify; this is something that represents exactly what was going on in the course of this conspiracy from somebody who was doing it during the course of the conspiracy and who had given it to someone else who was in charge of the conspiracy. It was seized from Gallardo's apartment.

Now, later on, probably the 30th of January, the same day that this search had taken place much earlier in the morning, Raymond Rivera shows up in the apartment, and he finds Martha Machado and Cuba and some other people there, and the place is obviously in a state of disarray, and he learns that Fernando Gallardo was arrested.

He has brought with him $40,000 as payment for the latest heroin that he has distributed, and Martha tells him, "Take it away, and William Cortes-Rios will tell you what to do with it."

And in fact that does come to pass.

In the beginning of February William Cortes tells Raymond to take that 40,000 plus another 10,000 to the bank in Bayamon.

Raymond makes that trip, he meets again with the secretary, Mr. Abril, the assistant manager, count the money, and it is at that time that he sees the logbook that Mr. Abril keeps of people who deposit these sums of cash and get the savings certificates. And it is interesting that he testifies he saw this book, because that is not a book that is kept in the normal course of the bank's business. There is no official reason for Mr. Abril to keep such a book, but he did keep such a book. And we know he kept it as well, because Mrs.Sosa testifies, yes, she was aware that he kept such a book.

Now, who makes the trips for the organization in February of 1975?

We know from probably two sources who that was, certainly from one.

Raymond Rivera testified that Luisito or a person he knew as Luis Nunez, and whom we know as Domingo Zayas, made two trips in February and March of 1975, at least, and he knows that because he was told that when Luisito returned from the first trip -- and that frist trip, by the way, is a substantive charge in this indictment and it is charge 26 -- when Luisito returned, Rivera actually saw the 14 packages of heroin in Luisito's apartment, and he discussed with Luisito about going to California and Luisito admitted to him that he had been making trips before.

Rivera distributed perhaps nine or ten of those packages, leaving four, approximately four packages, for Luisito.

We know that Rivera sold them to his regular customers: Moises, Richie Tirado, Tony the Mechanic, Gilbert, Puton, the Garcias.

Who did Luisito sell his to? And we have some idea about that too, because we have the testimony of Ramond Rossy.

The last time Rossy had dealt with Gallardo was that New Year's Eve transaction. He had dealt with Nino in January, and when Nino left the organization he hadn't done anything until some time in February, when he sees Martha Machado and Luisito together.

He asks Martha for some heroin and Martha says, "Meet me tomorrow at the liquor store."

And there is that meeting. Martha goes out and comes back shortly thereafter with Luisito and the transaction is arranged, and it is a transaction that takes place in Katz' delicatessen that afternoon.

You remember the scenario. Both of them arrive with paper bags, they sit down, they eat their sandwiches, and then they get up and they take the other's paper bag.

Rossy had brought $25,000 in his bag and he walked away with the half kilogram of heroin that Luisito had brought in his paper bag.

We have now gotten to March. We know at this time that Benito Cruz has taken up his partnership again with Jose Rivera and they are making their own trips to California.

We know that Raymond Rivera continues to distribute heroin to the customers of the organization throughout the spring, and he estimates that he sells perhaps 60 to 70 packs of heroin. The approximate value for this heroin or the amount of money that he returns to Martha Machado, Carlos Gallardo and others is $500,000, half a million dollars in heroin.

He leaves some time around Mother's Day, and that is the end of his participation in this conspiracy.

We know that others continue to associate together.

In March of 1975, that's the time -- specifically March 24th -- when Carlitos and Indio and William Cortes-Rios go in together in partnership on that pleasure boat down in Puerto Rico.

We know that in early April, 1975 Police Officer Jose Guzman is purchasing heroin from certain members of the conspiracy. He buys an ounce from Moises for $1800 and he buys -- I should say two days later he conducts surveillance of the liquor store and again he sees Cuba and Little Tony together outside the liquor store.

We know that in May of 1975 Cruz himself makes a trip to California. This is while he is in partnership with Jose Rivera.

He goes out by way of San Diego and they take a bus up to Los Angeles, and he meets with Hector himself, and he and Jose Rivera and their courier, Jose Perez Lopez, come back with a substantial quantity of heroin.

We know that Rossy is now dealign with them. Rossy is their customer and he is not dealing with the Gallardo-Machado group.

Eventually Rossy himself gets the connection in California, and we hear testimony from him about his trips out there, and in fact he is the one that actually gives us the telephone number of the California connection, that is, area code (213) 625-0300.

It is that number that he will eventually call after he is arrested when he takes the agents out to California.

In June we know that the California people are still in contact with Gallardo because in June, July and August of 1975 the toll records that I read to you last week indicate that Fernando Valenzuela placed a call from his Pasadena home to Fernando Gallardo's home, which at this time was in Elmhurst, Queens.

What is happening in July of 1975?

Well, we know from Detective Guzman that he was buying heroin from Puton and Flaco on July 8, 1975. That was a half kilogram at a value of $26,500. And he was also purchasing heroin from Rossy and Cruz, and that is the incident in McCarran Parkthat you heard a lot of testimony about. That was eventually to lead to the arrest of Cruz and Rossy.

Finally, we come to August of 1975, which is also a busy month in this conspiracy.

We know from hotel records, for instance, that Wilfredo Machado was still making trips to Califirnoa, because the record from the San Carlos hotel indicates that he was there on August 6, 1975.

Police Officer Burbage continued to conduct surveillance, and on October 13, 1975, again observing that liquor store on Prince Street, he again sees Cuba and Little Tony together with Martha Machado.

We know later on in the month from the telephone records that the California connection, the telephone number 625-0300, from that location a call is placed to Fernando Gallardo in Queens.

We know that in August of 1975 Cruz has a conversation at the juke box repair shop with Fernando Gallardo, and it is during this conversation that we first learn about another individual who has heretofore gone unmentioned in the conspiracy. He is a partner of Cuba and his name is Victor.

When Fernando Gallardo talks to Cruz he says, with Cuba being outside, "Cuba has sold 90 packages for me recently and he has made a lot of money."

And Cruz goes outside and talks to Cuba about it, and Cuba says, "Yes, I've sold 90 packages and I made 90,000, but I had to split that money with Victor."

And we learn who that Victor was from the testimony of Raymond Valentine, because it was in August of 1975 when Valentine couldn't obtain heroin from his usual source, Raymond Rossy, and so he went to a car service on Elizabeth Street and the car service was the Triple A Car Service. He meets Cuba, Cuba makes a telephone call. And who shows up? Little Tony. Anthony Rodriquez leaves and Raymond Valentine, who is old friends of Little Tony, goes to his apartment house at 252 Mott Street.

Somebody, whether it is Little Tony or somebody else in the apartment, it is not clear, calls for Raymond Valentine to come up. Valentine does come up, and he receives the one package, the one-quarter kilogram package of heroin that he had ordered from Cuba back at the Triple A Car Service. He pays Cuba for that in the car service later on.

After that he receives five more packages of heroin through Cuba or Cuba's partner, Victor.

You will remember, for instance, the incident where somebody walks up and hands him a package and there are grapes in the package and he goes off, walking off eating grapes, and in the bottom of the package was the heroin.

Another incident he was told to wait at Spring and Elizabeth Street, somebody comes along and tosses a package into his car.

The last two packages that he received from Victor or through Victor he paid for at once. And you will remember that testimony, I am sure, because Valentine drives by Prince and Elizabeth Streets and he sees Victor and Fernando Gallardo on the curb and he just chucked the money right out the window, and he checks in the rear view mirror and it is Victor who picks it up.

That testimony of bags of money just being carried around may have sounded a bit strange or a little farfetched, until the testimony of Police Officer -- I'm sorry -- Detective Raymond Vallely.

He happened to stop Victor, Victor Ramirez, later on that month. Victor Ramirez had in his car a paper bag, and inside the bag was packed 20s, 50s and $100 bills. Vallely estimated it had to be at least $10,000, exactly the kind of thing that Raymond Valentine testified about.

The distribution of that first package to Raymond Valentine by Little Tony is charged as a substantive count in this indictment, and that count is count 27.

Now we are approaching the end of the conspiracy.

In September Jose Guzman purchases half a kilogram from Cruz. This is the transaction that was set up with Fernando Gallardo and his delivery boy, Herman Rosa.

On September 23, 1975 Rafael Rivera, a police officer, undercover police officer with the New York City Police Department, meets for the first time with

Gilberto Torres on Eldridge Street, Gilberto Torres being the cousin of Fabian Rodriguez, and they consummate the first transaction for two ounces at that time in brown rock heroin at the price of $3600.

Three days later, on the 26th, Rafael Rivera again meets with Gilbert and his associates and buys one ounce of heroin for $1700.

As we press into October of 1975 we know that Kenny Robinson, a police officer, observed Tony the Mechanic, Antonio Morales, meeting with Fernando Gallardo's delivery boy, Herman Rosa, out on the street.

Finally, from the 13th to the 15th we have the last transaction between Jose Guzman and Benito Cruz. It is the transaction which will directly lead to Cruz' arrest. It is the 11 pounds of heroin, that is, five kilograms, which Guzman orders which Fernando Gallardo approves and which Herman Rosa delivers by the exchange of keys and parking tickets outside the Tad Steakhouse. That takes place on October 15th, and that is the date that Benito Cruz was arrested.

You have seen that 11 pounds of heroin. It is in evidence.

The next day Rafael Rivera, continuing his undercover work with Gilberto Torres, meets Torres again. This time he purchases a full pack of heroin, nine ounces of brown rock heroin, for $14,000.

At the end of the month, on the 29th, Raymond Rossy is arrested, and shortly after that he agrees to lead the agents to California. And this is now the first time where we get a complete glimpse of the locations in Calofirnia where Fernando Valenzuela and his group operate.

On the 4th of November Rossy and Guzman arrive in California.

The next day -- you will remember the testimony of Special Agent Hoelker which Mr. Ziegler read; I asked the questions and Mr. Ziegler responded -- Agent Hoelker was conducting surveillance the day after Guzman and Rossy arrived in California outside of an address which is on Allison Street in Los Angeles, California, in the Echo Park District, and he sees the license plate MITP on a Mercedes, and it turns out that that is Fernando Valenzuela's Mercedes.

On the following day, Rossy places his telephone call to the California connection, 625-0300, and he orders 20 kilograms of heroin. Twenty kilograms has a wholesale value in New York of $1 million at a price of $50,000 per kilo.

Rossy picks up the phone and orders 20 kilograms of heroin.

We know from Agent Hoelker's surveillance that Humberto Ramos-Serrano, also known as Red, also known as Colorao, gets into a car in the Echo Park District and drives to the hotel where Guzman and Rossy are.

We have met Colorao before, because he met with Rossy months earlier when Rossy was making his trip to California.

Colorao meets with Rossy and he is told there was something wrong with the heroin on the last trip, "I am not going to pay you the money up front, I want the 20 kis, you pick it up.

Colorao gets back into his car and he is followed by Hoelker to an address on West College Street. He returns with a suitcase and in the suitcase is 20 kilograms of heroin or approximately 44 pounds. He is arrested on the spot.

Rossy makes another call and gets Hector on the phone, and very shortly after that Hector is arrested.

Now, at the time of these arrests, Colorao's home was searched and found in the course of that search was Fernando Valenzuela's telephone number on some envelopes and a quantity of money totaling over $370,000 in cash.

Continuing in November of 1975 we learn that Rafael Rivera has his last undercover transactions with Gilberto Torres. This time he meets for the first time Fabian Rodriguez. He complains to Fabian about the purity of the heroin that he had been receiving before, and Fabian tells him, "We give it to you the way we get it."

Rafael Rivera asks him, "Do you have any of the white heroin?" and he said, "No, only the brown with the rocks."

There ensues a trasnaction involving $3600 for two ounces, and the two ounces are in evidence. You have heard the chemists tell about them. And at the time that the transaction took place the money was passed around and everybody participated in the counting, including Fabian Rodriguez.

Following that, on the 26th, that is, approximately a week later, back in Los Angeles, Special Agent Hoelker is searching the Edgeware Avenue apartment. That is the one I told you about, 810-1/4 Edgeware Avenue. And at that time he finds another quantity of approximately 20 kilograms of heroin. I believe this was 44.7 pounds of heroin. And he finds certain personal papers of Fernando Valenzuela also at the home.

And so within a few days, that is, December 1st, he searches the home of Fernando Valenzuela in Pasadena, California following Valenzuela's arrest, and at that time he finds the picture of Hector, Colorao and himself together in that restaurant, there are telephone numbers for the other addresses in Allison Avenue and Edgeware Avenue, and also in his home is a book with the address with a telephone number of Slugger Ann's Tavern underneath the name of Fernando.

We know as well that a couple of days later Police Officer or Detective Guzman arrests an individual I have been referring to as Ramoncito, and in his home he finds at that time $11,000.

That is essentially the evidence pertaining to the period of this conspiracy.

There are a few additional matters that I want to touch upon. It is evidence which relates back to those periods of time and to those associations, but it comes from events that took place much later. I am talking about some of the material that was seized from these defendants and these co-conspirators at the time that they were arrested.

On March 18, 1976 Cuba and Victor were arrested at separate occasions on the same day.

In Victor's possession was a telephone number of William Cortes-Rios in -- his Puerto Rico telephone number; in Cuba's possession was Fernando Gallardo's telephone number in Queens; and in both of their possessions were the laminated plastic one-half $100 bills.

We have the two half $100 bills. You can inspect them and see that both of them have the name Victor and Cuba written on them, both of them have the same serial number, and if you put them together you will see that they are indeed, halves of the same bill, demonstrating symbolically perhaps more eloquently than Raymond Valentine or Benito Cruz the partnership that Victor and Cuba had together in the Gallardo organization.

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On March 2nd of this year Angelo Roche was arrested in his home in Santos Isabel, Puerto Rico. At that time Detective Guzman noticed a car across the street and he said that it was similar to one that he had seen Jose Velasequez, Cowboy, driving a year and a half before that. Roche consented to the search of the car. What did the search reveal? In the glove compartment were documents which we have marked in evidence as Government's Exhibit 17D. You will have an opportunity in the jury room to inspect these documents at more length. But included in here is the New York registration driver's license of Angel R. Gonzalez for an East 9th Street address. You will recall that is the address that Raymond Rivera recalled that he lived at when he delivered the heroin to Angelo Roche. There are also a series of documents in the name of Jaime Velasquez.

We had the opportunity to hear Jaime Velasquez when he was called to the stand by Mr. Roche. Jaime Velasquez said, "Yes, that was my car and these documents were mine, except for a few which were given to me by Jose Velasquez for safekeeping." And that is, of course, an explanation of how there are also documents in this group of Jose Velasquez in the car outside Angelo Roche's home in Puerto Rico.

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I submit to you, ladies and gentlemen, that Jaime Velasquez's explanation of how those documents from Jose Velasquez got in the car outside Angelo Roche's home are misguided. The explanation he gave was that both sets of documents, which include the documents from the Reedman Corporation, Langhorn, Pennsylvania, came together when Jaime Velasquez and Jose Velasquez went down to Reedman so that Jaime could buy this car, that Jose got these other documents, gave them to Jaime for safekeeping, that he put them in the trunk and forgot about them. That story does not hold up, ladies and gentlemen. It does not hold up for two reasons. First of all, those documents were not found in the trunk of the car; they were found by Guzman in the glove compartment. But, even more basic than that, if you take a look at the documents, the Reedman documents in the name of Jose Velasquez are dated January 3, 1973. The Reedman documents in the name of Jaime Velasquez are dated October 10, 1975, two years and ten months later. So those were not given at that time. They appear in that car because Jose Velasquez had access to that car. As Detective Guzman recognized when he first saw it and remembered the car he had seen Jose Velasquez driving years prior.

On the following day, March 5th of this year, Carlos

Santiago was arrested. You will remember that before he turned himself in to Agent Andress Amador, Amador and Guzman and some other agents went to arrest him at Santiago's home in Dorado, Puerto Rico, and that was the occasion when Santiago went scampering out the back door and over the fence to avoid arrest. There came a time when Santiago did turn himself in, and he consented to the search of his home. Found at that time was the telephone bills not only of Adelaide Santiago, a relative of his -- I believe that may be his wife -- but also the telephone bill of the Shangri-La Bar with the name of William Cortes-Rios and also the telephone bill of Luis Ramos, also known as Indio, and, perhaps, most surprisingly, the business card of Francis Baez, of the Bayamon Federal Savings and Loan Association, Plaza branch, Bayamon, Puerto Rico.

Chegui, that is, Jose Luis Eglesias, Raymond Rivera's compatriot, was also arrested on the same day in New York City. He consented to the search of his apartment, and at that time found in his possession was a picture showing him and Puton together. I am sure you saw that picture, and an address book. In the address book there are names, and very familiar names from the testimony of Raymond Rivera, names of Luis Rodriguez, Puton, Pichi, Norberto, Ismael, and even Raymond Rivera's name itself, all

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in Chegui's notebook, exactly as you would expect it if the testimony of Raymond Rivera is to be credited. There also appeared an address on a slip of paper written out by hand, 110 Columbia Street, which is, of course, the stash apartment that had been reported to be the apartment of Chegui's mother, as well as documents of the Clinton Travel Agency. You remember that is the place William Cortex-Rios and Raymond Rivera worked together after Raymond Rivera was released from the work release program. And that was under the direction of Rogelio Avalle, who ran it. The documents that were found in Chegui's was a business card in the name of Rogelio Avalle, an insurance identification card made out to Iglesias by a Rogelio Avalle, and, finally, a travel receipt for a trip to Puerto Rico, on the receipt letterhead of the Clinton Travel Agency. There was also a telephone toll record for an October telephone call showing that Chegui called the Shangri-La Bar down in Puerto Rico. That is the bar that William Cortes-Rios owned, that Carlos Santiago worked out at for a while. There was also in Chegui's possession a business card of the Shangri-La Bar, and, to boot, $4,000 in cash.

And, finally, on the same day, March 3rd, here in New York, Little Tony was arrested, that is, Antonio Rodriguez, and there were two things of interest that were found in his possession. The first is a mourning card, a funeral card. I believe the date on it is some time in September of 1975. And it is a mourning card for Armando Gutierrez, who has been identified in the evidence as Cuba's brother, showing that certainly in September of 1975 Little Tony's association with Cuba's family. And the second interesting thing that was found was a business card for the A & A Car Service on Elizabeth Street. I submit to you that if the A & A Car Service had an abbreviation or nickname, wouldn't it be called the Triple A Car Service. And, of course, it was the Triple A Car Service where Raymond Valentine met Little Tony and Cuba for the first deal in August of 1975, when Little Tony eventually delivered a package to Raymond Valentine in his Mott Street apartment.

Now, ladies and gentlemen, I have completed my summarization of the evidence. I hope that somehow I have made it clear for you and that I have been able to bring it all together so that you understand how the pieces of the evidence fit together. I will sit down in just a moment and defense counsel will have their opportunity to address you and to tell you what they believe you should conclude from the evidence or the lack of evidence. I am not going to anticipate what they will say to you. I will give them the courtesy of making their arguments before I respond to them, because I will have an opportunity to respond. I will be given an opportunity at the conclusion to give what is known as a rebuttal summation. But I do want you to keep two things in mind as you listen to their summations: the first thing is the importance of your own common sense.

Someone once said that common sense is not so common. I hope that is wrong, because it is our common sense that will permit you to evaluate all of the testimony in this case, that has enabled you to scrutinize all of the witnesses in this case, to review the documents, the exhibits in the case, the stipulations; it is your common sense that permits you to evaluate and to put all of these elements together and determine whether or not certain or all of the evidence in this case is worthy of belief, whether it is something you can act upon. If your common sense tells you that certain of the government's evidence is not reliable, if as you listened to the testimony you decided from your common sense that it was not worthy of belief, if it was not borne out by the other evidence in the case, and,therefore, was not of such a character that you would credit it, and your common sense tells you not to, then, by all means listen to your common sense and don't credit that evidence. But, ladies and gentlemen, by the same token, if after having heard the evidence, having seen the evidence in its totality, having listened to the witnesses, having reviewed the exhibits, had access to the stipulations, if your common sense tells you that evidence is to be believed, that it is helpful to you in reaching a conclusion as to the issues in this case, then don't turn your backs on your common sense and don't reject that evidence simply because one of the attorneys for one of the defendants may tell you not to do so. Don't reject the witness because you are told to do so; don't accept evidence because you are told to do so. Exercise that common sense.

That brings me to the second thing that I want to mention toyou, and that is, you have had the benefit of five weeks or so of evidence. And it is for a good reason, so you would have the opportunity to evaluate all of the evidence in the case. You are not being asked to reach a decision on the basis of one witness' testimony or of one piece of evidence or of one stipulation or even two or three. You have been given a lot of evidence in this case, many pieces, which either in your mind do or do not fit together. Your determination as to whether they fit together is to be made, I submit, on the basis of all the evidence. Don't permit yourself to be led astray by having one piece of evidence pulled out of context, without taking into consideration all of the evidence in this case.

Let me give you an example of what I am talking about. You may remember back four or five weeks ago in the very beginning of this case when Raymond Rivera first testified, he told you about some staggering sums of money that he and William Cortes-Rios took to the Bayamon Bank, $50,000 in cash, not once, but over and over again. That testimony may be a little incredible. You may have found it hard to believe when you first heard it. But then you recall that the next witness for the government, Mrs. Sosa, from the bank, a witness who had no motive to come up here and do anything but tell us exactly what happened, and she told us that is exactly what happened, that William Cortes-Rios came in five or six times, each time with $50,000 in cash, that they went upstairs and they counted it and he got savings certificates for it. Well, Rivera's testimony by itself might have been a little confusing or bewildering, but when put together with Mrs. Sosa's testimony it is believable and it is in fact, I submit to you, what happened. So I ask you to evaluate the government's evidence in its totality. Don't pick it apart. It either fits into a picture that satisfies you or it doesn't. But view it in that regard. And I submit to you that upon a fair and due deliberation of the government's evidence in this case, fair to both the defendants and to the government, you will conclude that each one of these defendants participated in this conspiracy exactly as charged in this indictment. Thank you.

THE COURT: Ladies and gentlemen, we will take a luncheon recess now and we will reconvene at 2:30.

(Jury excused.)

THE COURT: There were various objections during the course of Mr. Moss' summations. First was that of Mr. Mitchell.

MR. MITCHELL: Your Honor, after having gone over the five times that I objected, I would like to withdraw my objections. I feel it would be better for the defendant if I took care of that in my summation.

THE COURT: Mr. Broderick had a number of objections.

MR. BRODERICK: I object to what Mr. Moss told us just a few moments ago. He stated three of four times to the jury as to not take out a piece of evidence and consider it by itself, to but to consider only the evidence in its totality. I suggest, your Honor, this is deeply misleading to the jury on the substantive count of my client and the other defendants. On the substantive count they can't consider the totality of the evidence. In the conspiracy count, yes. I suggest he repeated this three or four times. It is misleading to the jury and I move for a mistrial.

THE COURT: The motion is denied. I think it will be adequately covered by the instructions which I intend to give and which I gave, that I will instruct them on the law, and without accepting your characterization of what Mr. Moss said, I am sure my instructions will make it quite clear what they should consider.

Mr. Linn?

MR. LINN: Your Honor, I would like to defer my objection. I will take care of it in my summation.

THE COURT: Mr. Figueroa.

MR. FIGUEROA: In Mr. Moss' summation he indicated that the mass card that was found in my client pertained to the death of Cuba's brother. I don't know whether Cuba's brother had ever been identified as being on a mass card. For the record I will object. But I think probably he was, so I will withdraw my objection.

THE COURT: Mr. Landau?

MR. LANDAU: Mr. Moss mentioned about the middle of his summations something to the effect that was

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presented to the jury as the Machados [illegible] a group. It went beyond just naming individuals. Again, the government is trying to throw all of the Machados into one ball of wax. I have raised objection to this a number of times throughout the trial and I would raise it again, your Honor.

THE COURT: Well, it is something which I am sure you will do on your summation and I shall instruct the jury that it shall not convict somebody on the basis of association.

MR. LANDAU: Can I assume, as your Honor had indicated earlier, that it would go beyond association, but also talk about relatives?

THE COURT: Yes.

Mr. Stokamer? [illegible]

MR. STOKAMER: I would like to reiterate my objections concerning the 1975 observations of Patrolman Robinson. I went into this in detail before your Honor twice. If your Honor wishes, I can repeat it.

THE COURT: No, I recall it.

MR. STOKAMER: Thank you, your Honor.

THE COURT: I am sure you will deal with that on your summation.

MR. STOKAMER: I have no choice at this point.

THE COURT: Anything else, gentlemen?

MR. KRIEGER: No, sir.

THE COURT: We will adjourn until 2:30.

(Luncheon recess)

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AFTERNOON SESSION

(2:30 p.m.)

(In open court; jury not present.)

THE COURT: Mr. Moss?

MR. MOSS: Your Honor, I think perhaps the first order of business is to bring to the court's attention the fact that the exhibit which the government circulated to defense attorneys this morning itemizing the 3500 material that has been turned over in this case I believe has found no objection to it being marked as a court's exhibit, and I have promised to make copies of it available to defense attorneys upon their request.

THE COURT: All right, it will be marked.

(Court's Exhibit No. 4 marked for identificaiton.)

MR. BRODERICK: Your Honor, I would like to ask the court for a ruling.

You will recall that Mr. Moss' statement this morning, he reviewed all the evidence, etc., but he did not state anything at all about my client's alleged statement to him and to Detective Burbage.

I would like at this time, I plan to do this, unless it changes, to not mention that myself in my summation, and what I am asking the court for a ruling on is, of course, he has a chance to rebut, Mr. Moss has a chance to rebut my summation, but I am suggesting to the court if I don't mention it on my summation, I would ask the court for a ruling that Mr. Moss not be allowed to do it in his rebuttal.

THE COURT: I will hear from you, Mr. Moss.

MR. MOSS: The reason I did not mention it is because this morning I was essentially giving a summarization of all of the evidence that pertained to the conspiracy and I intentionally did not deal with those items that came in against individual defendants.

However, if Mr. Broderick is going to argue that the episode did not take place or that the defendant Orlando Machado is not the person who went to California and got sick on the airplane, I fully intend in my rebuttal to point out the fact that Police Officer Burbage heard Orlando Machado admit to those things in my office.

Obviously I can't respond to this until I know what doors Mr. Broderick has or has not opened.

I don't think that the turning point is

whether or not he mentions Police Officer Burbage's testimony, the important consideration is how he deals with the substantive count.

MR. BRODERICK: Well, your Honor, I suggest that is rather unfair. The government is taking close to two hours and 15 minutes to sum up the testimony and they have been given, by the rules of this court, a special right to rebut the summations.

I consider the whole system rather unfair, but we will set that aside for the moment.

The whole purpose of their rebuttal is to come back against our summations.

They have had more than enough time, they literally had hours to bring out the statement in their opening. If I don't bring it out on my summation, I suggest it is rather unfair for the government to come back and to say this after they had plenty of opportunity to sum up and save it for rebuttal and bring it back if I don't mention it, because then they are not rebutting anything I have argued concerning the statement.

THE COURT: Well, now, Mr. Broderick, I am going to be telling this jury it is not Mr. Moss' recollection of the evidence or your recollection that governs, it is its recollection.

Let us assume that instead of deliberately omitting mention of this because his approach on summation was a different approach, Mr. Moss had simply forgotten to mention this particular piece of evidence, this testimony of Mr. Burbage, that would not make it evidence that is before the jury and within the jury's potential for recalling away.

MR. BRODERICK: I agree.

THE COURT: The evidence would still be there.

MR. BRODERICK: Sure.

THE COURT: I will not rule that Mr. Moss cannot refer to this in his rebuttal, Mr. Broderick, because I don't think that would be an appropriate ruling.

Mr. Krieger, did you have something?

MR. KRIEGER: Yes, sir.

If your Honor please, I didn't realize that the summation would be of the dimension that transpired this morning --

THE COURT: I had two choices this morning. One was to rap and the other one was not to rap. I have chosen not to rap. Having chosen not to rap this morning, I probably won't rap this afternoon.

MR. KRIEGER: Fine. My remarks are not directed to the length of the government summation, simply that I request 15 minutes more than I had originally anticipated.

THE COURT: Surely.

MR. KRIEGER: Thank you.

(Jury present.)

THE COURT: Mr. Figueroa.

MR. FIGUEROA: May it please the court, defense counsel, members of the prosecution team, ladies and gentlemen of the jury:

The case is now coming to a close and I really got a good feeling this morning from Mr. Moss in his giving his simmation. It is a good feeling, because when you hear a splendid summation like that from a fine attorney like Mr. Moss it gives you a nice feeling that at least in this instance we are really getting full value for our tax dollars. And he did a fantastic job and he is to be commended on that. Before I go any further, however, I would really like to commend you, also. It has been the general feeling of defense counsel here that most of you have demonstrated very apparently your seriousness

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and the solemnity with which you view your oath as jurors, and we appreciate it because it is not easy for us at times to really concentrate fully, but you have done a marvelous job in that respect, so please accept my thanks and accept the thanks of my fellow counsel. It is something that is probably the first time we have agreed unanimously on any one thing during the whole, entire trial.

You heard a lot of evidence. You have heard evidence from Mr. Rossy.

A lot of things come back to mind in time, because this has been a long trial and there is a lot of testimony. One of the things Mr. Rossy testified about was that he had paid his attorney $50,000, and I think there was other testimony that Ramon Rivera had paid his attorney $25,000, more testimony that -- was it Cruz who paid $23,000 to his attorney?

It is very unusual, and it is very unusual because they all pleaded guilty in their cases, they were all cooperating with the government, and you wonder, really, why they would have to spend such enormous sums.

But getting back to Mr. Moss' summation, based on that scale or that index, he gave you really

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what I consider a billion-dollar summation this morning. It was really fine.

Of course, one of the main points of his summation was the fact that you have a conspiracy here, and he gave you reasons why the evidence, in his opinion, indicated that there was a conspiracy.

Well, I take no issue with that. There probably was a conspiracy here.

When I say I don't take any issue, please bear in mind on matters of this type, I only speak for Anthony Rodriquez. Other counsel have their own opinions. I don't think there is any doubt but that you did have a conspiracy in this case.

You had a conspiracy which was testified to. It really is quite obvious.

You had Rossy, you had Rivera, you had Cruz and you had Valentine. They testified that they met. A few of them went out to Los Angeles.

Is there any doubt about that, that they got together and they conspired and that there were overt acts and that there was in fact a conspiracy?

Of course, the big point here, ladies and gentlemen, is, was Anthony Rodriquez a part of that conspiracy.

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There wasn't too much mention this morning of the fact that it is the government's burden to prove that Anthony Rodriguez was a part of that conspiracy and that he meant to join it and that he had the specific -- bear that in mind -- the specific criminal intent to join that conspiracy knowing its purpose.

And I submit it is not going to be too easy an issue for you people on the jury to decide.

Here you have Anthony Rodriguez, who is an addict. When I say he is an addict, that's not a matter of opinion. Valentine, Rossy, the government's own witnesses, testified that he was an addict. You heard testimony from his brother saying that he was an addict for many years.

And I am not asking for sympathy. I don't want sympathy. I don't want you to acquit Anthony Rodriguez because he is sad-looking or he is a sympathetic individual. I want you to view these facts like juries have done for the past 200 years and view the evidence and then make a determination based on that evidence.

There is -- really, there is no excuse for Anthony Rodriguez having become an addict. I mean, how do you explain something like that?

Well, you might say that perhaps there comes a time in most of our affairs when we are really at a low ebb, when, through a series of disappointments, disillusionments, whatnot, we are really just scraping bottom, and most of us have gone through these periods. I think there are times in everybody's life when their moral flank is exposed, when he or she may just give way to temptation. And most of us get over this period, most of us go on, and it only remains a memory.

When Rossy, in this period of time -- rather, Rodriguez, when he gave in, there was really an awful mistake, because when he gave in he gave in by taking a needle and puncturing his vein, and that indiscretion led to another indiscretion, and those indiscretions took place throughout the entire period of this conspiracy.

And this is one of the things, really, you have to judge. Really, it is not a matter of a conspiracy.

Rossy and Valentine, they grew up in the same neighborhood. Whereas they took after the dream of easy wealth and easy riches as their way out of the neighborhood of Mott Street, Anthony Rodriguez, because perhaps he may not have been as vicious or as shrewd as they, gave in. And it was he who had to grapple with the nightmare world of the addict as his escape from Mott Street, and that's the way he escaped.

But Mr. Moss said, and the evidence does indicate, there was a conspiracy, and that's, I think, for my purposes, at any rate, beyond any dispute.

But there is not only one conspiracy, ladies and gentlemen. Here is a very important part.

Actually what you have here are two conspiracies, two conspiracies. And why do I say this?

You remember I mentioned that Rossy had paid $50,000 for his attorney, and this was after he was arrested and after he pled guilty.

Now, what does this indicate.

You will be asked to use your common sense, and I ask you to use it in this particular instance in this particular way:

A man who pays $50,000 for his attorney after pleading guilty and deciding to cooperate, is that this man's last $50,000?

Rivera, who paid $25,000 after deciding to cooperate and after being arrested, was that his last $25,000?

Benito Cruz, who paid $23,000 after being gtall

arrested, was that his last $23,000?

Valentine, I must admit, I forgot to ask Valentine how much he paid his attorney, but here you have those three instances, 50, 23 and 25, just for pleading guilty.

Doesn't that indicate to you, ladies and gentlemen, thatthey had other wealth?

Rossy,on that stand, testified that he had made over a million dollars. And I asked him where he had these million dollars, what banks, what safety-deposit boxes. And what were his answers?

"Well, I don't remember. Well, I don't know."

He very conveniently had $300,000 stolen from him.

Don't you think that the record indicates in this particular case that Mr. Rossy still has that $300,000.

Just figure it out. He paid his attorney $50,000, was out on $50,000 cash bail, which is $100,000 right there. And where did this money come from? From watching his pennies and nickels, from quitting smoking? No. These were the proceeds from his illegal activities.

He mentioned while he was on that stand that he had spoken to Gallardo and, indeed, there was some evidence that he is paying Valentine's attorney's fees.

Cruz got up on that stand and he testified that Gallardo had paid part of his attorney's fees.

Rivera also had the opportunity, and the record will bear this out, that they got together and that they were speaking to each other before they even came into this courtroom.

So you see, ladies and gentlemen, what I am asking you to believe and what I am asking you to believe that the evidence indicates is that these people have been allowed to maintain their riches, not only to maintain their riches, but to once again breathe the air of liberty as richmen.

These four, Raymond Valentine, Raymond Rossy, Raymond Rivera and Benito Cruz, were brought into this courtroom like the Four Horsemen of the Apocalypse, and instead of spreading despair, famine and destruction, they spread before you, ladies and gentlemen, lies, half truths and deceptions.

Now, I say half truths, because half truths are very important.

Look, nobody lies all the time, and witnesses don't always tell the truth all the time, and not all bad guys are bad guys all the time and not all good guys are good guys all the time.

When I say half truths, what is an example of this?

Well, there is no doubt that they were probably associated with Anthony Rodriguez; the same neighborhood. They all testified to that.

There is probably very little doubt that Anthony Rodriguez did in fact buy heroin on various occasions from Rossy, Valentine and probably Cruz.

These are the half truths.

The whole truth is that Anthony Rodriguez was never a dealer, because when you are an addict you can't be a dealer because when you are an addict nobody trusts you. They can't trust you as far as they can throw you. And Rossy and Valentine did not get where they were by trusting addicts who could blow the whole deal on them.

Ask yourselves when you consider this conspiracy put forth by the Four Horsemen, ask yourselves, who are the biggest dealers in this entire alleged conspiracy?

The Four Horsemen.

Valentine made hundreds of thousands of dollars; Rossy made over a million dollars, and Cruz -- here is a further indication of the conspiracy. Cruz, you will recall, in a couple of weeks, made over $800,000. While the federal forces, law-enforcement forces, were cornering Gallardo, Gallardo turned to the chancellor of the eschequer, Benito Cruz, and he says, "Look, things have been a little hot. You take over for me."

Benito Cruz did take over, because during that short span of time Benito Cruz made over $800,000. That is in the record. I think Mr. Moss alluded to it this morning.

And it was Benito Cruz who told us that at one time in the same two weeks he was in that apartment, in Gallardo's apartment, and in that apartment was about a million and a half dollars in cold cash.

What happened to this million and a half dollars?

Isn't, it apparent that the Four Horsemen are getting together and that they made some sort of deal with Gallardo, who has actually paid at least one of their attorney's fees, and that they are taking the brunt while they are protecting Gallardo?

Isn't it apparent that these four men were so inextricably wound up with Gallardo they knew his habits, they knew his favorite haunts, they knew his vacation areas. If they were really cooperating with the government, wouldn't Gallardo be here in this courtroom?

Or like Rossy protecting his wife and family aren't they also protecting G allardo?

Why isn't Gallardo here today? Why? Because it is quite apparent that the Four Horsemen are protecting them, just like Rossy protected his brother-in-law.

Did he hear about his brother-in-law being brought to court? Did he hear about his brother-in-law being prosecuted. Did he hear about his wife Nilsa being prosecuted? Did he hear about Gallardo being prosecuted?

The answer to all those questions is no.

You have the four biggest drug sellers, the Four Horsemen, and who is bigger than they are? Gallardo. And do you know what? Inside a year they may very well be your next-door neighbors.

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* Don't take it from me, ladies and gentlemen. You have the Four Horsemen. They are going to be loose. And who do you get in return for them? They give you Anthony Rodriguez, the addict. He is expendable, don't you see. Nobody cares about an addict. You can turn state's evidence against an addict. Nobody cares.

Do want an indication of the vileness of Rossy? Rossy testified -- and this is cute -- that he could not remember his safe deposit box or his bank accounts. He could not remember when he withdrew $50,000 out of the bank. I asked him, "Well, did you withdrew the $50,000 after you were arrested or before you were arrested?

"I don't know.

"Well, was it last spring?

"I don't know.

"Or was it during the summer?

"I don't know."

And that is in the record. But he could testify and he could swear to you that he remembers a conversation that took place in 1974 with Little Anthony Rodriguez, where Little Anthony Rodriguez called him up for a small amount of heroin, "I want to buy some heroin. It is not for me, but it is for somebody else." Do you know why Rossy said Anthony Rodriguez was buying it for somebody else?

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It is apparent, because Rossy knows in his own vile mind that Anthony Rodriguez is an addict and he knows that if the heroin were for Anthony Rodriguez, that he could not be prosecuted, and so he says, "It is not for me; it is for somebody else." And Rossy, the man who made an instant million dollars, knows that Anthony Rodriguez could be prosecuted for that. That is the kind of individual we are dealing with.

I am not asking you for sympathy. You have got the record. I don't have to go through it. You remember what the testimony was. You heard Rodriguez's brother. He got up there on that stand and he said as long as he knew for the last six years his brother, Anthony Rodriguez, had been a drug addict, that he and his brother had been drug addicts, that they shot up together, that they shot up not only heroin, but cocaine. The record is all here. Habit, four bags a day, $25, a hundred dollar a day habit. When is this? The date on this is August 27, 1975. Anthony Rodriguez at the end could not take the world any more and he goes to the hospital and he is going to get detoxified. What does he do? He enrolls at the Bernstein Clinic and goes in for the cure. And he finds that the cure without his heroin is a very difficult thing to take. He lasts only three or four days. It is in the record and you can read it, because this is evidence, and when I say this is evidence, the jury can take this into your jury room when you are deciding what this case is all about. You can read it for yourself.

Here is another page. It indicates nodding, lack of coordination, fresh puncture wounds. Again, this is August 25, 1975. Do you know what is important about this? Mr. Rodriguez is accused in August of 1975 of selling or giving Valentine a quarter of a kilo of heroin, and here is during that same month suffering with this condition. Does that sound logical to you? Does that sound as though somebody would trust a heroin addict with a quarter kilo of heroin, worth, I think, some $12,000 or more? This evidence is here. You can go through it.

And this is another piece of evidence, where Dr. Nichols indicates that when Anthony Rodriguez left, he left of his own volition and it was his own responsibility in case anything happened. I am not asking for sympathy here. I am asking you to apply the law as the judge will give it to you, and the law, you will find, will say that a man has to have specific criminal intent before he can be found guilty of joining a conspiracy.

Look, some of you are from the suburbs, some of you are from the city and some of you know more about the city than others. Some of you have had a college education, others may just have a high school education. But regardless of what type of education, regardless of what background, when you go into the jury room you stand all equally tall, because what counts in there, ladies and gentlemen, is experience, experience and common sense, and that you all have. So that when you are in there and you are talking about these facts, hear your fellow jurors and also be ready to contribute your own thoughts. Don't be persuaded by arguments, unless you really believe that those arguments hold water, because you have a right to your own opinions based on the evidence in this case.

Now, look, I don't say that the Four Horsemen are the biggest criminals in this particular case and I don't say that Anthony Rodriguez is the smallest fish in the pond. Here we have the indictment itself. The Grand Jury heard the accusations and they made the decision on this page of the indictment. You will find that the first name that the Grand Jury chose to put up on this indictment was Fernando Gallardo. You will also find that the last name they chose to put down in this indictment was Anthony Rodriguez. He is not really the very last. John Doe is the last, so they put him next to the John Doe they didn't even know. Doesn't that indicate to you what we are dealing with? Doesn't this indicate to you a perfect case where an injustice has been done, where the serious violators have gone out to ride, to breathe the free air of free men, whereas Anthony Rodriguez is here? You take a look at him. Does that sound fair? Is that what we call justice or is that not, rather, injustice?

And what is injustice? You know, I was looking up the definition of injustice last night in preparation for this. I opened up a dictionary and it said injustice is the absence of justice or the lack of justice or something like that. I can't use that definition. Injustice is really something maybe you really can't define. You can't define injustice, but there is one sure, and that is when you see injustice, you will recognize it. And it is an injustice to Tony Rodriguez, the addict, to be in this courtroom while the Four Horsemen go marching off in the sunset. Injustice is something like love, you can't define it.

The government would say to you, perhaps, well, you know the case Anthony Rodriguez does not really depend upon just Rossy or Valentine or Cruz; it depends on all of them. They can't all be lying. And I submit to you and I suggest to you that whether you have one liar or whether you multiply that one liar by four other liars, if they are all liars you don't get anywhere near the truth, because if you have four liars, they are not worth the credibility of one honest man.

You have Rossy, who admits he perjured himself not only before the Grand Jury, but in trials in this very building. Is that the sort of evidence you are going to decide the case on as far as Anthony Rodriguez is concerned? The government will say, "Well, there are four of them." And this is what I have probably heard once too often. I hate to do it, but as far as judging Rossy's credibility, let us say that he was a TV salesman and one day he knocked on your door and he says, "Oh, I got a deal for you. I have got this brand now 23-inch RCA color TV and I am going to give it to you for $350." Would you buy that TV set from him? Suppose after he gave you that pitch, Valentine comes along and he says, "Members of the jury, I am not only going to give you that TV set for $250, but I am going to repair it for you and I am going to give you a 90-day guarantee, parts included." Would you still buy that TV set? And suppose after all that was said, Benito Cruz comes along and says, "If you buy the set I will give you a replacement if anything goes wrong," and he probably will tell you he will steal it, "I will replace it with a stolen TV set right off the piers," because you have heard him testify to that. He said that. Benito Cruz is so crooked that even when he does something mmhh7

honest, he has to call it dishonest. You heard his testimony. You heard his testimony to the effect that he bought depressed goods, which means goods nobody else wants, and he used to buy these goods honestly and he would take them back and tell people they were stolen so he could get rid of them. What I am trying to bring out, ladies and gentlemen, is you judge the credibility of government witnesses like you judge anybody else's credibility, and here where you have three or four people testifying, that does not mean that much. The United States Supreme Court has called the jury system and the jurors ministers of justice. And it is a very appropriate phrase. It is a correct phrase, because that is what you are when you go into the jury room. You know, our Constitution sets up three branches of government, the court system, the executive and the legislative. In other countries throughout the world they have copied that Constitution and they have set up the same Constitution and it just doesn't work. And it doesn't work because no matter what they say that they have, they do not have the jury system that we have in this country. And that is why our country has prospered and it has grown, because of the jury system, because you are the number 1 safeguard against people being brought into court and being convicted on false testimony.

I want to really deal as much as I can with the facts in this case. I want to deal really with the evidence, because that is what I am asking you, the jury, to base your decision on. Here is a copy of the indictment. Count 27 in this indictment accuses Anthony Rodriguez of distributing heroin a couple of weeks before he entered a clinic for the addicted. Now, I submit that it is essential for you to consider the evidence before you can reach a determination on this count as to whether he was in the right frame of mind or whether he was in a stupor when that happened. You heard his brother testify that frequently at home Anthony Rodriguez would be nodding, he would be sleeping, he would not act right to his mother, that he was in a continuous daze. And here on page 8 of the Beth Israel Medical Center record in New York the nurse's notes, you will find, August 25, 1975, 3 P.M. admitted, a 23-year-old, for heroin detoxification. Appears slightly drowsy. Does that indicate to you that Mr. Rodriguez was selling junk in the streets of New York? I am not even asking you to believe Valentine on that, because you should not really even get that far.

When Valentine got on that stand he testified that after knowing Rodriguez all those years and after going to Cuba, Cuba calls up, has to call up Anthony

Rodriguez to come there so that he could meet Valentine after they all grew up in the same neighborhood. Doesn't that strike you a little peculiar and doesn't it sound peculiar, that Anthony Rodriguez has to go off somewhere and meet this guy Valentine? Don't you think these people, as long as they were in the drug trade, wouldn't it have been quite easy for Cuba to get on the phone and speak to Anthony Rodriguez, "I am sending Valentine up in a couple of minutes. Give him whatever you have"? That is the way you would do it. You don't call Anthony Rodriguez there and have him go back. There are certain principles of business that even drug dealers like Cuba would follow.

Do you know why Valentine didn't testify the way it might have happened? Valentine didn't testify that Cuba got on that phone and say, "Look, I am sending over Valentine to see you. Give him some drugs," because he knows in his mind that when Cuba picks up that phone he can't really tell who is at the other end and he can't come in here and testify and say, "Well, it was Tony Rodriguez he was speaking to on the phone." Isn't that obvious? The machinations they went through to show that Rodriguez had given Valentine some drugs. That is only part of the story.

You don't even really have to take into account the addiction of Tony Rodriguez, because you all recall the testimony. You will recall that I questioned Valentine on the stand as to whether it was not Tony who had appeared at the window, and he said it was. I said,"Well, did you ever tell anybody that before?" And he said, "No." I asked him, "Are you positive?" He said, "Sure." I said, "Are you really sure?" And he said, "Yes, I'm sure." And then I gave him Rodriguez Exhibit A in evidence, which indicates that at a prior time he said it was Tony Rodriguez that appeared out that window, and I showed it to him and asked him, "Well, does that refresh your recollection?" And what did he say? Well, what else could he say? He says, "I said it." You can read this, too, because you are allowed to have this in the jury room any time you want to.

Look, I could go on and on. But I submit to you you can't believe the witnesses as far as Tony Rodriguez is concerned, because everybody just loves to step on an addict. And even if you went to the extreme where you actually believe that testimony, I believe that you would not be able to find based on the evidence in this case that he had a specific criminal intent, and the Judge will charge you on that. Count 27 really falls, ladies and gentlemen. And as far as this indictment, well, this indictment is really just a piece of paper.

You heard testimony-- and there is testimony right here before you -- that Anthony Rodriguez was an addict for many years and that he was an addict for at least seven years and that he was an addict for the full seven years of the term of this conspiracy, which started in October, 1973, and finished up in November 6th of 1975. You will find in the Beth Israel Medical Center record there is an indication that the patient started with the addiction of drugs seven years ago, and at that time he was taking heroin, and at the time he was admitted he was not only taking heroin, but cocaine. He wanted to escape Mott Street. Heroin was not enough for him; he wanted to mix it with cocaine. It is all here before you.

When you read this indictment, remember, this is only an accusation. This is only an accusation, and this indictment has no holy powers, no mystical powers, it is not an icon, and I am not an iconoclast when I tear it, because it is just a piece of paper. It really means nothing. It does not mean anything until you, the jury, actually decide what the facts are.

Now, I told you that not all bad guys lied all the time and not all good guys told the truth all the time.

I think an instance of that is when I asked Rossy whether he had given consent to the policemen to go into his apartment. He said, "No, I did not give him consent. They told me if I didn't give them the key they would break down the door." Then Robinson got up on the stand and Robinson was asked if Rossy gave consent to go into the apartment where the gun was found and the incriminating evidence. He said, "Yes, I asked him.

"Well, was that voluntary? Was that of his own volition?"

He said, "Yes."

Now, you know, he was lying. There we have an instance of a cop lying. And not all the bad guys lie all the time, not all the good guys tell the truth all the time.

I also asked Patrolman Vallely. He testified that he had gone into somebody's apartment again by consent. To make the question more extreme, I asked him, "Well, did you ask him for his consent?" And he said, "Yes." I said, "Well, did you say, please?" You remember what he said. He knew he had not gotten consent.

What I am trying to get at, members of the jury, you are the triers of the credibility and the facts in this case. Of course, the government might say, "Well, the

Four Horsemen, they were very bad guys and we don't vouch for them. They are pernicious characters and we don't admire them; we just have to use them, because, after all, they are the type characters you would find involved in this. We would rather have ministers testifying for us, but ministers don't get involved in this. We don't pick the witnesses; the defendants do."

I ask you, did Rodriguez have any choice growing up at 252 Mott Street with the likes of Rossy and Valentine, who later come into court to lie, to hang him to save their own scalps? I would really like to ask you. You know the answer. How long will it be before all Four Horsemen are off somewhere on some tropical isle feeling the warm sun, lying in the sand, drinking, and perhaps Fernando Gallardo will come over and join them. Perhaps they will talk about the old days, back on the other isle in Manhattan, and perhaps they will say, "Boy, we really put one over that time." Is there any doubt in anybody's mind here that Rossy still has hundreds of thousands of dollars? That Cruz has hundreds of thousands of dollars?

Let me give you another indication. Everything I am telling you, ladies and gentlemen, as far as the facts is right in here in the transcript of the trial. Do you remember when Cruz was on the stand I asked him about his money? It is always interesting to ask witnesses like that about money. I asked Cruz, "Well, where do you have your money?" He says, "Well, I had it buried." You remember this.

"I had it buried."

"Well, do you have any money anywhere else?

"No, I had buried it on Grand Street, the apartment house which I owned in Brooklyn."

I said, "Well, did you hire an attorney or was an attorney appointed for you by the court?"

He said, "I hired an attorney."

And I asked him, "Well, how much did you pay your attorney?"

And he said, "$23,000."

I asked him, "Well, you didn't pay him that money before you were arrested? Is that correct?"

He said, "No, it was after I was arrested."

I said, "Do you mean you went back there and dug this money out from the ground?"

He said, "No, somebody else paid it for me."

I said, "How was it paid?"

He said, "Well, Gallardo gave me $8,000 for my attorney's fees and another friend of mine was holding $16,000."

Has he other friends? Is he lying when he says his money was stolen? Cruz got up on the stand and he testified that the $40,000 which he buried was also conveniently stolen.

The second instance, the second theft of the century is when Rossy testified that the $300,000 which he had was also stolen. Isn't that convenient? Where do you think that $300,000 is today? And how do you think Rossy paid the $50,000 cash bail? Go over the facts. Go over the medical testimony in this case. It is all here for you to see. Anthony Rodriguez did not take the stand; he did not testify in his own behalf. And that, ladies and gentlemen, the Judge will instruct you on this, you are not to consider the fact that he did not take the stand. The fact that he did not take the stand was a tactical decision. You are not consider that. As a matter of fact, if in that deliberation room you consider that, you are violating your oath as jurors. The Judge will instruct you on that in lot better terms than I.

There has been a lot of testimony throughout the trial. And Mr. Moss, good representative as he is of the government, gets up and says the government takes the position so and so. And you start asking yourselves, well, it is the government against Little Anthony Rodriguez,

mmhh 16

the United States against Anthony Rodriguez. And here you have the awesome power of the United States seemingly arrayed against poor defenseless Anthony Rodriguez over there. But you ask yourselves, you carry that title of United States Government a little further and you ask yourselves, "Well, who is the United states or who is the government?" And your answer undisputably has to come back that you, the jury, are the United States, that the judge is the United States, that all the people out there are the United States, and that, yes, Little Anthony Rodriguez is part of the United States.

You also have to consider when you start your deliberations that there are not any winners or losers in this case when you decide the facts based on the evidence before you, based on the credible evidence, on the undisputed evidence; there are not any winners or losers if you come back with the decision based on the evidence. The only time somebody loses is when you, the jury, decide this case merely because it happens to deal with narcotics and merely because you decide the case on prejudice. Then everybody loses, because there is a chink out of the armor of the United States, out of the fabric that puts and holds it together.

I beseech you again, ladies and gentlemen, when you go in that jury room you all stand equally tall, and regardless of whatever decision you come up with as a jury, no one dare criticize you because you have the final word in this matter. And I hold to your oath as jurors, the oath you took upon being sworn in as jurors, to the effect that you would listen to the evidence and that you would decide the case on the evidence and render a true verdict based on the evidence as you heard it from that witness stand. If you do that, ladies and gentlemen, if you decide here the case based on the evidence as it has been unfolded to you, I submit to you that you will acquit Anthony Rodriguez, the addict. Thank you.

THE COURT: Mr. Krieger.

MR. KRIEGER: May it please this Honorable Court, madam foreman, members of the jury, gentlemen of the prosecution, my fellow defense counsel: I am very happy to have this opportunity to again speak to you. The sorrow that I at this moment have is that this is going to be the only time veritably, for the rest of my life, that I will ever be able to speak to you, because when all defense counsel conclude, the prosecution will again have the privilege of speaking to you, and I, much the same as all the rest of my fellow colleagues of the defense, will have to be silent, and so far as I am concerned, it is very distressing, because I am sure when I get home tonight my wife will ask me what did I do today, and I am going to have to say, "I was in court and I spoke to the jury, but, you know, there is something else that I wanted to tell the jury I was thinking about this morning, I was thinking about at lunchtime, but I forgot." So if there are things that you feel that I should have addressed you and I didn't, please forgive me, I may have forgotten it.

Now, obviously, I don't know what will take place when you deliberate in the jury room. I know that there will be a verdict. What that verdict will be will be your sole supreme determination of the facts in accordance with the law as given to you by this judge and the judge alone. I am a lawyer, Mr. Moss is a lawyer, but we are not going to tell you what the law is. The judge, and only the judge, will tell you the law, and you will receive the law only from the court.

Now, you spent this morning listening to the prosecutor, to the many things he said. A lot of things he omitted. One of the most fundamental things that he omitted was that his case was predicated upon the words of scoundrels, brigands, evil men, liars, and I ask you, did he at any time amongst those voluminous and detailed notes that he constantly referred to, did he make reference on any occasion that a government witness lied? That a government witness lied in another trial? I submit that the government witnesses were confronted with bald-faced inconsistencies, incredulous statements, sheet effrontery, and that the government in its requests that you believe it. Now, mind you, these individuals were called upon to testify in this prosecution as witnesses on behalf of the United States of America. This is the foundation, the substance upon which the government seeks if not veritably, implores that you return a verdict of guilty.

177A

Now, what is the case about?

Many, many weeks ago, when the weather wasn't quite as warm and the sun was not as shiny, there was this statement made in this courtroom:

"One witness cannot testify to this entire conspiracy, nor can one document or one stipulation give you the entire picture of this conspiracy, that you all have to put together the pieces of a jigsaw puzzle to arrive at an entire picture."

Then, naturally, he said you are going to find that this is a simple case.

Now, we all know who uttered those words of wisdom. That was Mr. Moss.

And I submit if after five weeks of the most tedious, vexing, inconsistent testimony you think that this is a simple case and one which clearly manifests everything that the government seeks, I would suggest that when you leave here, go across and speak to Mayor Beame, because he needs you.

Think of what Mr. Moss said this morning. Think of the bald-faced, unequivocal assertion that that young man uttered to you:

"Everything has been proven."

Not that we have striven mightily, not

that they have accumulated five volumes of transcript, not that they have come in with certain bits and pieces of evidence, not they are subject to the slightest frailty or the slightest doubt of any mortal, but clear prosecutorial unequivocation:

"Everything has been proven."

Do you know what that reminds me of? It reminds me of something that we lawyers were told many, many years ago of the witness who told an incredible story, and the story was: "When I was asleep last night I dreamt that the moon was nothing other than a piece of green cheese, and if you don't believe me, if you doubt my story, I have the absolute proof to validate the dream. Here is the plate upon which was put the piece of green cheese."

Now, what has the government been able to prove or seek to prove with respect to my client?

He says my client knows people. We have long since gotten past the stage of the game that because you know somebody, in essence you are wedded to him, in essence you are one and the same. We do not have the un-American concept of guilt by association.

What have they been able to establish?

They have been able to establish by way

of a stipulation that my client, Mr. Santiago, William Cortes-Rios owned a boat. There is no question, they owned a boat.

Now, because they owned a boat, according to the government, they were engaged in a conspiracy.

It might have some validity if they got one of their biblical scholars, whether it be Raymond Rossy, Raymond Valentine, Louis Rodriquez, Ricardo Garcia or one of those all-American types that I am sure you would want your daughter or my daughter to marry, to say that the boat was used for bringing narcotics from Thailand to the Panama Cana.

But they don't have that. They simply say, "We have a document which shows that three people knew each other, and because they knew each other they had to know each other for purposes of criminality."

We in America have seen a horrible assassination of former President Kennedy, have been hearing conspiracy, conspiracy, conspiracy until it is veritably coming out of our ears.

And look at the basic unfairness of the prosecutorial representation when they deem that one of the other defendants is the godfather of my client.

I'm sure we would all be very, very much impressed if Mr. Marlon Brando were to enter this courtroom. But failing that, the government seeks to do naught save inflame one's thoughts.

Now, this is a pivotal and important stage, not only in your lives, because I don't know how many times in the future, if ever, you are going to have six-month -- a six-week case, but I do submit that this matter is of pivotal import and determination so far as my client is concerned, and insofar as your sworn duty to see that justice is done, justice without fear, justice without favor, justice without hysteria.

It doesn't serve you any purpose, it doesn't serve the court any purpose, it doesn't serve the country any purpose by looking at the panoply of exhibits and saying, "Somebody must be punished and we have got a man seated here, let's punish him."

The prosecutor mentioned the term "scenario." I don't know how his presentation would play in Peoria, but I submit that it cannot and should not prevail in the Southern District of New York.

I wish that I could state to you in complete honesty that all throughout this morning my attention was riveted upon each and every word that was uttered by the prosecutor. I wish that I could tell you that every word that was uttered was cohesive, was joined, had an inexorable force and logic to it.

It grieves me to say it was naught save a disjointed juggernaut of massive quantity, I submit none of which was binding, was directed, was pivotal so far as my client was concerned.

I submit that the government seeks to overwhelm by exhibits, by stipulation, by what it will claim to be corroboration so as to beguile you into returning a verdict of guilty.

The government has asked you to use your common sense. I naturally join in with that.

I feel that the use of common sense can result in a determination naught than a verdict of not guilty because I submit common sense on each and every one of our your parts must result in a rejection of the conglomerate lies of those twin pillars of integrity, Raymond Rivera and Benito Cruz, because the evidence which the government seeks to have you and each of you believe so as to return a verdict of guilty as against my client comes from the mouths of those two men.

I submit that you should use your common sense and you will reject the testimony of each of those witnesses.

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Now, the government has a bit of evidence. May I have the exhibit with Indio, Exhibit 6?

MR. MOSS: Yes (handing).

MR. KRIEGER: I refer you to Government's Exhibit 6.

The government says, "This is absolutely right out of the horse's mouth, and the reason for that is that even if you don't believe the testimony of our witness, you can believe what he wrote down."

I submit that is absurd, because if a man is a liar when he talks, he does not become an oracle of truth when it is written down. And yet that and that alone is what the government has sought to establish in its Exhibit 6 when there is a reference to "In."

Now, this is incredible. There is a reverence to "In." The government says "In" means Indio, and because it is introduced as an exhibit it must validate something which was said, irrespective of the fact of whether you did or did not believe it when it was uttered.

When I was very young I took a course in chemistry and we were told about a very famous Frenh chemist by the name of Lavoisier. When he was called upon to explain certain chemical reactions and he didn't know the answer he said, "This is the effect of flowgistin, and flowgistin is an unknown quantity, but it solves a great many answers."

And I submit that we have had a host of that in this case and we have a goodly amount in this claim of conspiracy.

Now, what is all this about so far as my client is concerned? What is the case really about so far as my client is concerned?

Basically, he is accused of buying heroin. That's what it's about. He is accused of buying heroin. Now, you figure, well, if a guy is accused of buying heroin why don't you lock him up, why don't you charge him with buying heroin?

One man, if he bought it once, is charged with one count; if he bought it twice, charge him with two counts.

No, they don't go for that. They seek to put my client, who has been mentioned quantitatively most infrequently in this prosecution, as a member of a massive international narcotics conspiracy. He's got to sit here for six or seven weeks, he is present when a veritable horde of evidence is introduced, and the government feels that with this mighty juggernaut of evidence, none of which I submit is directly attributable to my client so far as culpable conduct is concerned, that he will be swept along in the undertow of this massive ferryboat.

Now, what is my client accused of?

My client is accused in this indictment -- and as Mr. Figueroa has indicated to you, an indictment is an accusation, it has no independent value or substance, but my client is accused of partaking in a conspiracy, and three overt acts are ascribed to him.

And the government, in essence, says -- and the court will define and describe a conspiracy to you -- the government says, "Mr. Krieger, your client is a member of a conspiracy and he did three things, three overt acts, in furtherance of the conspiracy."

And it is overt act No. 11, which alleges that in September he received approximately one-quarter of a kilogram of heroin, overt act No. 27, that in October Rivera delivered ten quarter kilogram packages of heroin to my client, and that in October of 1974 my client, Mr. Luis Nunez-Ramos and other people and Rivera, in New York City, had a discussion concerning the sale of heroin.

Now, he is also accused in two substantive counts. Count 7 charges that in September, in the Southern District of New York, that he possessed a quarter of a kilogram of heroin, and that in October, in the Southern District of New York, he possessed approximately two and a half kilograms of heroin.

What do you think the government has introduced to establish or seek to establish those accusations?

It gets that citadel of integrity and virtue, Raymond Rivera.

And I submit to you, members of this jury, that in order for you to return a verdict of guilty, as the government beseeches you, you have got to believe those two characters beyond a reasonable doubt.

You remember Rivera. Rivera was not one of the sweet little boys who was unable to take care of himself. Rivera had been around, he's got a criminal record; he knew how to take care of himself. He could take care of himself. He could take care of himself outside a courtroom, he could take care of himself in a courtroom. He's had dealings with lawyers for heaven knows how long.

And I asked Mr. Rivera these questions and

I received these answers.

Mr. Moss, I am going to read from page 575 and 576 of the transcript, and if I don't read correctly, my eyes are frailer than I like to think.

Now, mind you, you had heard that creature testify to innumerable narcotics transactions, and listen to what he said when I conducted my cross examination of him. It is very brief and I will not hold you much longer.

These questions were put to him and these answers were given:

"Q When, if ever be the case, prior to entering this courtroom did you ever see him?

"A I see him before this.

"Q When?

"A I testified against him in Puerto Rico.

"Q I said when other than in a courtroom did you see my client?

"A I just see him here when I come here to court.

"Q Mr. Witness, you see him in the courtroom?

"A Yes.

"Q I'm not interested in your answering me that you see him in the courtroom. Is this the only time you have ever seen him?

"A Before in Puerto Rico I see him.

"Q You see him in the courtroom and you saw him in Puerto Rico?

"A Yes.

"Q And those are the only occasions you have seen him?

"A Yes, they are."

Now, what happened afterwards?

The answer is nothing. The government had an opportunity to pursue that on redirect. They could have asked him questions:

"Did you understand what Mr. Krieger was saying? Was Mr. Krieger speaking too loud or was he speaking too soft? Was he frightening you? Was he confusing you? Were you mystified as to what was going on?"

It's absolutely no; completely different to the testimony of the government's very own witness who contradicts their fundamental tenet.

They have got young people here, they have a vast access to resources if need be. It was not pursued, I submit, because there is nothing further to be pursued.

The great beauty of cross examination is that in a situation where questions are put by a lawyer in no way beholden to the governmet the truth may well come out, and I submit that with respect to Rivera it did.

Now, if that wasn't bad enough, they get that other citadel of biblical veracity, Mr. [illegible] of the numbers operations of New York City, the fellow who has made so much money, doesn't remember how much he made, doesn't have a dime left, doesn't know what happened, all that he knows is that he was a hot shot numbers operator and he was losing money, and he was talking about narcotics activities.

And the government asked him these questions. Now, this is Mr. Moss putting these questions to Mr. Cruz. And I could assure you that all I was doing was sitting next to my friends at the defense counsel table and not opening my mouth. This is at page 2122 of the transcript. And I repeat, this is on the government's direct case. This is not in cross examination.

"Q You testified that you began to distribute heroin for the Gallardo organization again in January of 1975?

"A Yes, sir.

"Q When in January?

"A I'd say I started about the 5th of January."

This, mind you, is the government.

"Q Will you tell us who you distributed heroin to?"

And look who he said he distributed heroin to:

"A Raymond Rossy, Ramoncito, Little Fabian and Gilbert -- Fabian and Gilbert, Little Gilbert, Puton, Ramon from Caguas, Puerto Rico, Victor -- that is Vitin -- and Little Tony.

"That's about it."

Never ever mentioned my client.

I am through. I beseech you, do right when you deliberate, as I am sure you will.

Amongst your deliberations if you could but think of me for just one moment I would be very grateful.

I hope that when you do think of me you will conclude that the government's case is, as is the ancient law of Scotland, not proven. The government has toiled mightily, but has come down with naught but a mouse.

You are not the avenging arm of Jehova. It is not your job to say, "I do not like narcotics. I am a juror in a narcotics case, without further ado I will return a verdict of guilty against Luis Nunez-Ramos." You value your oath too highly.

I submit that your consideration warrants the return of a verdict of not guilty, not guilty, not guilty as to each of the three counts of the indictment.

Thank you so much.

THE COURT: Ladies and gentlemen, we will take a 15-minute recess.

(The jury left the courtroom.)

THE COURT: Mr. Figueroa, I have a note from you here which I don't quiteunderstand.

MR. FIGUEROA: Yes, your Honor.

During my summation -- and I tried to fight against it -- I know Juror No. 5 had his eyes closed. I did everything I could to sort of see if he would open them at various times and he did not.

I was wondering -- I didn't know whether the court was going to take a break at this time, but I was figuring before Mr. Broderick gave his summation it might be a good time to have a break and perhaps consideration might be given to the feasibility of making some sort of statement to the jury in general that -- I don't know what type statement, but that they should fight or resist this type of temptation, sort of close your eyes and even perhaps doze.

I really got the feeling that he wasn't really quite with me. And I banged a medical exhibit right in front of him several times and it didn't do any good.

THE COURT: Well, you apparently felt pretty good as to all other people, Mr. Figueroa.

MR. FIGUEROA: Yes, your Honor. But I just noticed now -- there was another juror who was sort of -- I think it was juror No. 9, who sits right in back of him, was sort of joining his sort of somnambulance there.

I don't know whether it is the conditions in the courtroom or not, but it is very disconcerting to see jurors who seem at least to have their eyes closed.

THE COURT: Mr. Landau?

MR. LANDAU: There have been some others who have fallen prey to the same desire, I guess. Possibly if the window could be opened a little bit it might help. My feeling is it is stuffy.

I am willing to sit here and ring a little bell if I see someone's eyes close.

THE COURT: I was watching the jury and I must say -- maybe it is a different perspective, but I did not note what you seemed to have noted, Mr. Figueroa.

Maybe it is just a lack of enthusiastic response.

MR. FIGUEROA: I don't think it was that, your Honor. I went right up to him and I hit the bannister.

THE COURT: You certainly did rather --

MR. FIGUEROA: His eyes remained closed. I thought perhaps he was ill.

THE COURT: Gentlemen, I have been doing a little arithmetic here and I think it is going to be necessary for us to continue this afternoon if we are going to finish the summations tomorrow, which I think is desirable to do.

One of the problems is that Mr. Broderick is our next -- you will have to let me finish the sentence.

Mr. Broderick is our next attorney to sum up and he has an hour.

Does anyone have any objections to splitting that, starting with you, Mr. Broderick?

Do you have any objections to splitting it and having, say, a half hour this afternoon and the other half hour tomorrow morning?

MR. BRODERICK: No, your Honor, I don't have any.

I would ask for the court's indulgence, though, tomorrow morning when I begin again, if I can recap very briefly to pick up the train of thought.

THE COURT: The whole purpose of going on this afternoon is to save time and we don't save time if we stretch an hour into an hour and a quarter.

MR. BRODERICK: I might just for one or two minutes to recap over what I said today to bring it to the jury's mind.

THE COURT: So far as any other defense counsel, is there any problem with that?

The government?

MR. MOSS: The government has no position.

MR. BRODERICK: Your Honor, on second thought I have planned out my summation and it has, hopefully, a certain balance to it, etc.

I would be willing to stay after 5 o'clock so I can finish it today.

THE COURT: I think that would be most desirable if it is all right with everybody and there is no problem with the jury.

MR. FIGUEROA: Your Honor, the defense counsel feel if the court is willing to, it's a good idea.

THE COURT: All right.

We will take a 10-minute recess.

MR. MOSS: Your Honor, at two times during Mr. Figueroa's summation I noted objections.

THE COURT: Yes. One of them had to do with his suggestion that if the Four Horsemen had been truly cooperating, they would have given up Fernando Gallardo.

MR. MOSS: Yes.

It made it sound as though the government was somehow protecting Fernando Gallardo and in fact was not making proper efforts to get him into court. And of course your Honor knows there is a bench warrant presently outstanding for him.

Fernando Gallardo has in fact jumped a combined bail of $175,000 cash in a state and prior federal case.

THE COURT: I am sure, without going into too much detail, that that is something that can be straightened out in your rebuttal, and certainly it will be dealt with in my charge.

The other matter, I think, had to do with the question of whether or not it was Mr. Rodriguez' decision or Mr. Figueroa's decision that Mr. Rodriguez not take the stand, and the suggestion was that it was a tactical decision on the part of Mr. Figueroa.

MR. MOSS: That's correct.

I think that is entirely improper for Mr. Figueroa to testify as to what he may or may not have advised his client, what his client may or may not have had in his mind when he decided not to testify.

I don't think I would be permitted to speculate why Anthony Rodriguez did not take the stand and I don't think it is at all appropriate for Mr. Figueroa to offer his own explanation.

THE COURT: I think that is something which I can straighten out on the charge.

MR. LANDAU: Judge, I have two brief objections.

One is with reference to when Mr. Figueroa was talking about the order of the indictment and talking about how his client was last or just a little bit short of last. Well, as far as the defendants on this trial, there are a number that are missing from the indictment and my client is first in the order of defendants at trial now.

THE COURT: In another context, you have gotten quite a bit of distance out of this.

MR. LANDAU: Well, only distance from his client as far as the order of the indictment goes.

THE COURT: What is your suggestion?

MR. LANDAU: That is past, but I just hope that no one else goes into order of indictment.

My other objection was with reference to Mr. Krieger saying that he is assured that there will be a verdict. I think he might have left an impression, I am sure the judge, in his charge -- well, I don't know how you want to handle it, but there must be a verdict, guilty or not guilty.

THE COURT: I am not going to encourage them to come in with a hung jury.

MR. LANDAU: I understand that, but I just have an objection to what Mr. Krieger put forth to the jury because it is inaccurate.

MR. KRIEGER: I think it would be improper for me in my summation to ask any American jury to hang.

MR. MITCHELL: It's a good idea.

MR. KRIEGER: I am certainly not going to do it.

THE COURT: We will take a ten-minute recess.

MR. BRODERICK: Your Honor, if I can just have one moment.

Your Honor, I think my summation is going to take over an hour and Mr. Linn suggested perhaps if we came back at 9:30 tomorrow morning --

THE COURT: We are going to come back in any event at 9:30 tomorrow morning.

(Recess.)

198A

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(Jury in box.)

THE COURT: Ladies and gentlemen of the jury, I did tell you earlier in the trial that we would be on a schedule which generally would be a schedule from 10 in the morning until 4:30 in the afternoon. This week it is necessary to adjust that schedule, because we don't have the presentation of evidence, we have the summations which now have to be delivered and then your deliberations. For this afternoon it is going to be necessary for us to go on for another hour or so. Tomorrow morning we will convene at 10 o'clock. We shall have to stay until approximately 6 P.M. tomorrow night, and then tomorrow I will speak to you about the schedule following.

Mr. Broderick.

MR. BRODERICK: Judge Broderick, Mr. Moss, members of the prosecution team, my brothers at the bar, members of the jury: so we come to the end of the trial. You have heard the defense attorney so far today tell you what they think the evidence is here. Now I would like to direct my remarks very briefly to Mr. Moss' statements. He went on for two hours and 15 minutes about what he thought the evidence was. I suggest to you that his statement to you, as well as my statement, is not evidence. It is not something that you can consider when you go into the

mmhh 2

jury room. The only thing that you can consider when you go into the jury room is what you heard from that witness stand, the witnesses that came to you and told you what was claimed to be the truth.

The first thing I would like to say, of course is that Orlando Machado has by his plea of not guilty denied his guilt and he says through me to the government, "Prove me guilty beyond a reasonable doubt if you are going to ask this jury to convict me." And that is what the government is doing here. They are asking you to believe their witnesses, to trust their witnesses, to rely on their witnesses. They are saying to you, "Our witnesses will convince you beyond a reasonable doubt, beyond any reasonable doubt, that Orlando Machado is guilty of a crime."

Now, let me speak about that very briefly. What is a reasonable doubt? Of course, the judge will go into this in detail on Wednesday. What is a reasonable doubt? It is a doubt that any reasonable man might have; it is the kind of doubt which causes a reasonable man or woman to hesitate to act.

Remember the context in which you are going to receive this case. The context is that Orlando Machado must prove nothing, nothing at all. The government is

mmhh 3

coming to you and they are saying to you, "We can and have proved him guilty beyond a reasonable doubt. You should be convinced that he is guilty beyond a reasonable doubt." And they say to you, "This is how we did it. We put witnesses on the stand, witnesses on whom you can rely, witnesses on whom your conscience can rely." Because, remember now, it is your conscience that is now on the line. You have to vote what you think is right. You have to vote whether or not you have been convinced beyond a reasonable doubt. When you go into the jury room you have to throw out all your surmises or your feelings. Whether you feel he is innocent or guilty has nothing to do with it. The only issue there is whether or not the government has convinced you beyond a reasonable doubt. If they have not convinced you that Orlando Machado is guilty of the crime, then you must vote not guilty. That is the context. The proof is whether or not the government has convinced you beyond a reasonable doubt.

Another thing we should discuss very briefly, is the presumption of innocence. This was stated at the beginning of the trial, and I reiterate now, you have to presume him to be innocent. When you come into the courtroom, you look at him and he is presumed to be innocent, not presumed to be guilty or neutral. He is presumed to be

mmhh 4

innocent, and that presumption continues today, all the five weeks of this trial, it continues through tomorrow, and it continues right into the jury room. You have to look at him and presume hkm to be innocent, and that presumption only falls out of the case if you are convinced beyond a reasonable doubt that he is guilty. So that, again, is the framework, the outlook, the viewpoint that you must have on this case. First, are you convinced beyond a reasonable doubt. And, along with that, you have to presume him to be innocent.

Orlando Machado is accused, among other things, but one of the counts of the indictment accuses Orlando Machado of possessing heroin. It is a substantive count, possession of heroin with intent to sell. Now, I suggest to you that Mr. Moss might have been just a trifle misleading this morning when he said to you that all of the evidence in the case, all of these witnesses must be considered by you on that count. They are not to be considered by you on that count, and Judge Broderick will charge you that later this week on that count you are to consider only the evidence against him, not against everybody else, not against the conspiracy, and all that stuff on the substantive count, whether or not he possessed heroin with intent to sell, only the direct evidence against him.

mmhh 5

Now, let's consider for a minute exactly what that evidence is. Orlando Machado has been mentioned for all practical purposes in this trial only three times. The first one was Raymond Rivera, the first witness in this trial, when he, if you remember, identified him and all the rest. We will get to that in a moment.

The second was Detective Burbage. Detective Burbage said that Orlando Machado had said certain things to him. And the third one was Benito Cruz. Benito Cruz stated he was a courier, et cetera.

But, remember, those are the only three times that you have heard his name in this courtroom. All this other evidence you heard was about other people had nothing to do with Orlando Machado. It was about other things that happened with other people. And on this substantive count you can only consider those three pieces of evidence. You can't go into all these other things, just those three pieces of evidence.

So now let us analyze those three pieces of evidence. I suggest we go in reverse order. Let us take Benito Cruz, Detective Burbage, and then Raymond Rivera.

Benito Cruz, all American boy, someone a mother can be proud of, a man of character and integrity, wasn't he. Remember when he was cross-examined by my able defense co-counsel, Mr. Krieger? Do you remember when he asked him, "Did you ever pay a police officer any money to keep your numbers operation going?" He said nothing, not even a nickel. He said he operated numbers throughout New York, New York County and Brooklyn, and he paid nothing to a police officer. I suggest to you when you heard those words from his mouth, he is a liar. Anybody who has lived in New York City more than ten minutes knows in order to keep a numbers operation working you have to pay people, you have to pay policemen, you may have to pay organized crime. But look how quickly and easily these words came from Benito Cruz's mouth, "No, I never paid anybody anything." He is a liar. You know it and I know it, firstly.

Secondly, you have to determine whether or not you trust him, because that is the essence of any trial, the core of any trial. The lawyers make different statements, ask questions. The judge rules on the law. But the core of any trial is the witness and the defendant. The core of any trial is whether or not you in your conscience and in your mind can believe and can trust these witnesses that are presented to you. I am concerned only with the witnesses testifying against Orlando Machado. I am concerned only at the moment with Benito Cruz.

So the question, then, the core of this case is

mmhh 7

can you trust Benito Cruz?

Now, the first question you have to ask yourselves-- and it is the same thing you would use in your ordinary day-to-day dealings with people -- your common sense. And first of all you would say, "What is his background? What do I know about this man?"

Let us look at his background, brought out again by very able co-counsel. Since 1956 he has been cheating people. He is a thief. He stated to you on cross-examination he has committed over a hundred crimes. His credo, as again brought out by Mr. Figueroa, is "Dog eag dog." This is the way he lives. He has been living that way at least since 1956. He is a cheat. He is a liar. He is a con man. He has been conning people for years and years and years. He told you --these are not my words, these are his words -- from the witness stand about conning people, lying to them all the time. So I suggest to you the first thing if you are going to rely on him, if you are going to believe in him, take a look at his background -- a cheat, a liar, a con man.

Secondly, take a look at what he said to you. Try to remember what he said to you from the witness stand on cross-examination. Oh, he is very good on direct examination, very calm, came right out with all the things

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he had to say, very calm. But what happened to this facade of calmness on cross-examination when he was asking probing, searching questions? All of a sudden he was no longer calm, all of a sudden, I suggest to you, your thrust and your reliance on him had to crack. Why? Because he lied to you.

Remember when I asked him about the 1966 conviction in Queens County? Remember I asked him what happened with that case? Remember, it was the case of the credit card, where he was sitting in an automobile, he was just sitting there, and he moved the automobile about 25 yards, and then all of a sudden he was arrested, and then the next thing he knows through an unfortunate series of circumstances, he finds himself in a Queens County court telling that court that he is guilty. Then a couple of months later he finds himself in a New York County court telling that court that he is guilty. But then he comes to you and he says, "I am innocent; I didn't do anything." Isn't it only common sense that he is lying; either he lied to those courts or he is lying to you. One way or another, he is a liar.

I suggest also then he expects you to be silly enough to accept that kind of a story. Where a man is convicted of two crimes just for sitting in an automobile, is that someone you can rely on? You cannot be convinced beyond a reasonable doubt by that kind of a witness; you can't rely on him; your conscience won't let you rely on him; your common sense won't let you rely on him. That is the core of the government's case against Orlando Machado. They offer you Benito Cruz and they ask you to be convinced beyond a reasonable doubt. Your conscience should be clear. Don't hesitate to act. Would you convict because of Benito Cruz? Because he lies to you?

Let's take a look at some of the other lies he has told. Remember when Mr. Figueroa was examining, asked him about the four or five thousand dollars that he had hidden and all the rest of it? Obviously, he was holding this money from the government, wasn't he? Why didn't he tell the government about that $4,000 that he had hidden? Why did he keep that a secret from the government? Wasn't he conning the government, just like he was conning you? There is no way you can be sure of what this man says, because he will say anything at all. He is a liar, a con man, has always been such, and you cannot rely on him.

Again, it was mentioned earlier, he stated to you, and these are his words, not mine, that he has committed over a hundred crimes. Do you think the 101st crime, that of lying to you, means anything at all to him? Do you think it has any meaning? Do you think he hesitates more than a half second to lie? He does not hesitate lying to you more than you would hesitate having a second cup of coffee. Lies are nothing to him. Or if you say, "I don't know whether he is lying or not," well, that is not the issue. The issue is can you trust him. Can you trust this kind of a witness with this kind of moral jelly? Can he convince you beyond a reasonable doubt? I say no. The government has to give you hard compelling evidence which convinces you beyond a reasonable doubt. But instead of that hard compelling evidence, what did they give you? They give you five foot ten inches of moral jelly sitting there. He does not hesitate to say anything to anybody. You heard his credo, "Dog eat dog. I am going to survive. I don't care what I do or what I say. I am going to survive. That is all." Yet it is this kind of a man the government comes to you with and says, "Believe him." Don't worry about the other stuff, don't worry about the cross-examination, be convinced beyond a reasonable doubt, because he is their star witness, Benito Cruz.

Again it was brought out on cross-examination, I remember asking Mr. Cruz, "What did you say to last year's jury about these prior convictions?

"I don't remember.

"The Court: Did you say anything to them?

"I don't remember."

Why doesn't he tell you about what his testimony of last year was? Is it a secret? Or maybe he doesn't want you to hear? Maybe he wants to cut my cross-examination, even though I had a transcript of last year's trial. And so we have his answers, I don't remember," say anything, do anything to survive. This is the way this man lives, the way he has always lived, and that is the way you saw him live when he was on the witness stand.

It was suggested earlier in the trial, suggested by Mr. Mitchell, that you have to bring to this case the same kind of common sense -- and the Judge will say this to you on Wednesday also -- when you evaluate this case, you have to look at it with the same common sense that you use in your everyday dealings with people. You evaluate witnesses that way.

Let me suggest for a moment and give you an example of a butcher shop. Let us use a more common example, a supermarket. Let's say you go into this supermarket to buy some hamburger and you have always liked Swift hamburger. They don't have any Swift hamburger, all they have is Hormel. I am not familiar with these things. And you don't know anything about Hormel hamburger, but there is a man there and you ask him, an employee of the supermarket, you ask him, "Will you tell me whether or not Hormel is good hamburger?" And he starts giving you a sales pitch, he starts speaking to you about the hamburger. Let us pretend for a moment that buying this hamburger is of the utmost importance to you and that you have to be convinced beyond a reasonable doubt before you will buy that hamburger. Let us say that this employee starts giving you a sales pitch, and you whisper to somebody else there and you find out that this man cannot be relied upon, he can't be trusted. And why? Because you find out from your friend that is whispering to you that he has been a con man for 20 years, that he has been a cheat, that he has committed over a hundred crimes. This you find out. You find out also as the conversation goes along that he lies. Then you continue along and you find out that this man is desperate, he is panic stricken, he is filled with fear that he will fail in convincing you.

Here is what I am referring to. Remember in the cross-examination of Mr. Cruz where I asked him after he was arrested in October, 1975, "How did you feel for a couple of months when you knew that you were facing 30 years in jail? How did you feel about that?"

He said, "I was afraid. There was fear in me."

I said, "It was a living nightmare, wasn't it?"

He said, "Yes."

And, of course it was, fear of 30 years in jail would cause anyone to panic, to be terrorized, to be filled with fear. And this is what he had, and it was only then that the fear had penetrated deep inside him and gone to his crazy brain, that all of a sudden he talks to the drug agents and tells the drug agents, "Someone else did wrong," because, you see, those are the keys to freedom. As long as you tell them, "Someone else did wrong," they let you out of jail, you go to Attica for just one year, not 30 years, you save yourself 29 years in jail. He is talking to his attorney. His attorney says, "You can't win the case, you can save yourself by entering a plea of not guilty, you are going away for 30 years." And he knew it, he was afraid of it, he was in deep fear.

By the way, the words that have been used in this trial should have been more explicit than behind bars, prison,jail, et cetera. Benito Cruz knows what jail is really like. When you go to jail it is like being caged like an animal; you are not treated like a human being in jail. It is a horror beyond belief for anyone that has been in there. There is tremendous mental pain. You are put there like a dog; you are kept like a leper away from society. And Benito Cruz knew this. He knew of the assaults that you get from other prisoners; he knew the hellish existence of a human having to be in jail, because that is what really happens. Benito Cruz knew this, because he had been in jail for 27 months, back in 1953. Remember, that was brought out on cross-examination. He knew about the cage and he was not going back into that cage. He knew the keys to the cage, though. The keys are you talk to the drug agents, you tell them that someone else did wrong, and all of a sudden your nightmare is over, the fear goes away, you don't have to be afraid any more, because now you are free. There is no more care for you. All right, a year, but that is all, just a year, not 30 years in a cage. It is all over for him, but now the question is, can you rely on what he said under those circumstances?

We know he is a cheat, we know he is a liar, we know he is a con man. And there was this fear in him, that kind of fear that crazes the brain, and that is what it was. Terror, panic, that is what he had in his mind, and you are going to question him and then he says, "someone else did wrong," because that is what cooperation is. As long as you say, "someone else did wrong," you walk free, and that is what happened with him. And that is what this

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case is about. Now, this is the kind of witness that the government comes to you with and says, "You be convinced beyond a reasonable doubt. You believe him. You rely on him. Your conscience should be clear. You should be convinced that Orlando Machado is guilty because this kind of witness says he is."

Drawing the parallel again, back in that supermarket-- we have been there quite awhile -- you know that this man is trying to convince you to buy the hamburger, you know he is a liar, a cheat, a con man, and he lies to you in the same fashion and you find out that he is desperate to sell you that hamburger. I suggest to you under all of these circumstances it violates every shred of common sense that you have to believe him and be convinced beyond a reasonable doubt by a man under those circumstances and with that reputation. Yet that is exactly what the government is suggesting that you do here, believe him, trust him, like this employee of the A & P. I suggest you can't. Your common sense will tell you, "No, I can't trust Benito Cruz. He is a liar and a cheat; he lied to me; he gave me this song and dance about the Queens County conviction; he never told me until cross-examination about the New York County conviction."

Remember, I cross-examined him on it. He never said anything at all, did he, on direct examination. And when he was asked by Mr. Krieger, "Were you ever convicted of any of these sales of licenses and registrations?"

"No, sir, not convicted."

But here is tangible proof of his lying. This is in evidence. You can take it into the jury room with you if you wish or you can ask that it be read to you. There it is, and it is very rare in a trial that you can see a lie sitting on the railing there. He lied to you. He told you there were no other convictions, but there it is. Fortunately, I was able to find this and bring this out and show it to you, because I wanted to show you the liar he is. He lies and lies and lies.

The problem with him is not only that he is a liar, he is a facile liar. He does it calmly, easily. But, again, if this is the fellow that is behind the butcher counter, can you believe him? Can you trust him? Can you be convinced beyond a reasonable doubt of anything at all that he says? I suggest that you can't.

His other conviction, in Brooklyn, remember we talked about that on cross-examination. He said to you, "Oh, I just went in the store." I asked him about what happened over there in Brooklyn in 1953. "I just went in the store and I stuck a toy gun at this fellow and he picked up a stick and chased me." Later on on cross-examination he had to admit that he pled guilty to attempted robbery in the third degree and he received 27 months. He stated on cross-examination he did not use a real gun, it was a toy gun.

Do you believe that? Do you believe someone is put in jail for 27 months for using a toy gun? He is accused of a crime of violence. They do not use toy guns with crimes of violence. Lying. Lying. Lying when he talks again.

Remember how calm he was on direct examination, but how the facade crumbles when he gets cross-examined? When you ask him about these things, when he is given a chance on cross-examination to explain things, he lies again. This is the way this man operates; that is the way he lives.

All right, let's move on to the other pieces of evidence. Remember, there are only three pieces of evidence against Orlando Machado. That is the first one. That is the core, that is the heavy guns from the government. I suggest to you it violates your common sense to rely on him, to be convinced beyond a reasonable doubt that he is telling the truth, just exactly the same as you would not believe the employee of the A & P to buy that hamburger, because you would have to say, "I am convinced beyond a reasonable doubt that this hamburger is good" because he says it, and the answer would always have to be, "No, I am not convinced what he is saying is accurate."

The second piece of evidence is, of course -- and Mr. Moss did not mention this in summation, even though he is summing up all the evidence, he never mentioned this because, of course, he was waiting for me to try to explain it, and then in his rebuttal he will bring it up. Remember in his rebuttal I don't get a second chance. In his rebuttal there is another side of the crime, I am sure there is, and I don't get a chance to come back, and I ask you to remember that. And when you are listening to his rebuttal, probably tomorrow afternoon, remember there could well be another side to the coin, but the defense attorneys cannot bring it up because they don't get a chance to speak to you again. And don't think we did not have ideas called to your attention, because the procedure in this court is you don't come back for a second summation.

The second piece of evidence is Detective Burbage. You recall Detective Burbage takes the stand and he tells you that Orlando Machado gave him a voluntary statement, voluntarily told him about his trip to California. This is what he said on direct examination -- but, again, try to recall. First of all, what language were they speaking in? Orlando Machado admitted there was no interpreter there when he was speaking in Mr. Moss' office, none at all. Yet Judge Broderick saw fit to put an interpreter in this courtroom and he is listening to the words I am using now through the interpreter. Why didn't Mr. Moss have an interpreter there? Why wasn't he there? Why didn't he make a recording of it? Why didn't they make a movie film of it or have a TV tape? None of these things were done. All we know is Detective Burbage takes the stand and he tells us it was voluntary and that he understood it, even though he speaks Spanish. Yet Judge Broderick thinks it appropriate to give him an interpreter. Mr. Moss said, "No, we don't need that; we will talk to him in English and we will give him his rights, that he had a right to an attorney in English." And then they come to you and they say you are to believe this. Tht is the trouble with this. They say you have to be convinced of a reasonable doubt what Detective Burbage said concerning the voluntary statement.

As you remember, he was arrested on the street, taken off the street, thrown into an automobile with handcuffs, taken down to be processed, photographed, searched, etc.

Let's go into the search. What did they find on Orlando Machado. He, of course, could not know he was going to be arrested. Nothing. They did not find any heroin on this big heroin dealer here. He was not wearing $300 suits, he was not driving a Cadillac, he was wearing simple clothes, didn't even have a nickel in his pocket, was going to work as a baker, his usual occupation. He did not have a quarter for coffee for the coffee break, this bigtime heroin dealer over here, Orlando Machado. He didn't know he was being arrested. I think that is important. They seized him from the street. They didn't seize anything with him, because he didn't have anything, he doesn't have anything. The government is paying for the interpreter he has right now. He cannot afford anything, this big heroin dealer here. They took him off the street, they put handcuffs on him. He didn't say to them, "Hey, this is my big day. I want to see Mr. Moss to give him a voluntary statement." He didn't know Mr. Moss, never heard of Mr. Moss. He was taken to Mr. Moss' office by the government. He didn't say, "Boy, I can't wait to see this government prosecutor so I can give him a statement." He was taken to Mr. Moss' office by a police officer with a loaded gun and he was in handcuffs when he was taken there, taken into the office, sat down, interrogated for one, for two hours.

And on cross-examination it was brought out that he was not allowed to walk out of that room. I said to the police officer, "Suppose he got up and said, 'Nice speaking to you chaps. I am going to walk out,' what would have happened to him?" And after a couple of questions Burbage finally had to say, "I would have taken him, put him back in his chair." Of course, they are not going to let him walk out.. But don't have an interpreter, don't make a TV case of it, don't use a movie camera so you can see. No, we don't have any of these things; we just have a statement by Burbage. And I suggest to you there are great difficulties with this. I suggest it is not voluntary at all; he didn't understand what it was; he is a Spanish speaking human being. And if you were to consider what words he used, let us consider exactly what those words were on cross-examination. He is supposed to be a courier going out to California. On cross-examination Mr. Burbage states, "I asked him the specific questions." And, by the way, when I am quoting testimony, I am quoting it word for word, and if at any time you are in the jury room you have any question that I have not quoted accurately, you may ask the court, who will ask the court reporter to read it back for you. On cross-examination I asked him, "Did he say to you"-- by the way, the words are always the police officer's words or

Mr. Moss' words -- I asked him whether Machado understood what was going on. And he replied sometimes he understood sometimes he didn't. I asked him about the statement, I said, "Did he tell you that he had placed the heroin on the plane?

"No.

"Did he have the heroin in his hands while he was on the plane?

"No.

"Did he take the heroin off the plane?

"No."

And yet they come to you and they say, "Look at this great courier, this wonderful courier." Yet he does not put it on the plane, does not have it on the plane, does not take it off the plane, and they ask you to be convinced beyond a reasonable doubt that he was a courier, that you are to believe beyond a reasonable doubt that the right language was used, that he understood it.

I suggest, going back to Cruz for a moment, that knowing the full personality and background of Benito Cruz, he is a walking, talking reasonable doubt all by himself. You don't have to consider anything else in the case. Just think of Benito Cruz, the con man, the cheat, the liar. Secondly, I suggest when you consider the statement, this wonderful statement and asked to be convinced beyond a reasonable doubt, you have a reasonable doubt just about the statement. I suggest to you consider what he had in his pockets when he was seized, taken off the street is another reasonable doubt. And there are others, too, and we will get to them in a moment.

Well, the third major witness that the government brought to you, a wonderful fellow, a man you can put great reliance on, Raymond Rivera. Rivera, first of all, is well prepared. He has been speaking with the drug agents and the United States Attorneys for months and months and months preparing himself for this trial. He was well prepared, well thought out, etc. And then the government comes to you and they put this paragon of virtue on the stand and ask him to testify for them. And what does he do? I am speaking only with reference to Orlando Machado. He tells you very calmly and after a great deal of preparation he tells you Orlando Machado is Ferde and "I dealt heroin with him." That is what he tells you. There was a conference, you recall, at the side bar. I am not going to tell you what that was. It does not matter. And then on cross-examination I ask him to think carefully about it, and, of course, I asked him "Is this Ferde or is it not?"

"That is Ferde," he says. "That is the fellow I dealt heroin with."

Okay. Remember this is the kind of evidence the government is giving you. They are asking you to rely on it, to put your trust in it, to be convinced beyond a reasonable doubt.

But what happened after that? After that several things happened. One of them was that I cross-examined Mr. Rivera a little further, and on cross-examination it comes out that in the Grand Jury he had identified a picture of one as Ferde. It also comes out that the picture he identified in the Grand Jury was someone else, it was not Orlando Machado, it was someone else. Yet the government will come to you and say you can rely on it. Then a lot of other things happen. Finally -- and this is the best of all -- Judge Broderick stepped into the picture. Judge Broderick said to you, "Disregard that evidence completely; there has been a misidentification." What he was saying to you is this is not Ferde, that never has been Ferde, will never be Ferde, disregard it, and he is going to tell you this on Wednesday in his charge to you, to disregard that evidence by Raymond Rivera.

Think about it for a moment. The government presents their witnesses. They have infinite resources.

They have hundreds of millions of dollars, they can call on local police departments, they can call on state police departments, anybody, the DEA, whomever they need, they can call on the Federal Treasury, they can call on all kinds of mechanical and scientific devices. And what do they do? What kind of a case do they give you? They put Raymond Rivera on the stand and they said to you when he testified, "Here is a witness that is going to convince you beyond a reasonable doubt." And yet two or three days later you hear Judge Broderick, who, of course, operates differently, he says to you, "Disregard that evidence; there is a misidentification. That is not the Ferde and that never will be Ferde." So I suggest to you when you go into the jury room don't you have to hesitate, don't you have to say, "Hey, wait a minute, what is going on here? What kind of a case is the government giving to me. They are asking me to convict another human being who laughs and cries and weeps and feels pleasure and pain as I do. They are asking me to condemn him as a criminal because of this fellow, Raymond Rivera." That is the kind of evidence they are asking you to accept to convict someone beyond a reasonable doubt. Even Judge Broderick had to straighten them out. I say to you it violates your common sense and that you cannot do this.

Let's consider, and the judge will charge you this way, that in your evaluation of this case, you can consider not only the evidence that is brought to you but the evidence that is not brought to you, evidence that is lacking here.

I have already alluded to a couple of them. I will give you a couple more.

The government -- why didn't they bring in the airplane tickets?

They said my client was a courier to California. Well, fine. If he is a courier to California, why didn't you get the airline tickets to prove it?

Why don't they put an upstanding person on the stand that I can look at and trust and believe in to identify the airline tickets?

No, they don't do these things.

Why don't you give me a witness in any part of this case, why don't you give me a witness that I can trust, someone that tells the truth, someone who is reliable? Why don't you do these things?

No, they don't do these things.

You don't see any evidence of the airline tickets.

They could have put a stewardess on the

stand, "Do you remember seeing him?"

I don't know how fair this would be, because stewardesses and pilots and agencies see thousands of people.

Why didn't they bring the airline tickets? Why didn't they get the hotel records on checking in? They keep records.

You don't see any of these things.

Instead of that they give you the all-American boy, Benito Cruz, and they say, "Believe him, this wonderful human being, believe him."

When you put the fear in him, all this hard, compelling evidence that is supposed to give you a man 5'10" of moral jelly, the moral jelly melts into water and then you have nothing and you cannot believe him.

You cannot accept what he says. Why? For the best of all reasons: because it violates your common sense.

All right. One further point. I have given different arguments this afternoon as to why and how the government has not proved my client guilty beyond a reasonable doubt. I ask you to remember just one other thing. And I, of course, attacked Cruz, etc.

I ask you to consider just one other point.

Suppose if you don't accept anything I have said this afternoon, you want to believe in Cruz, you want to put your faith and reliance in Cruz, let's say you want to do that.

I suggest to you that even on that basis, if you want to do that, then you have to be fair, and I think you will be fair, even if you believe him. Let's say you believe Cruz, you don't accept the arguments I have given you.

Don't you also, under those circumstances, still have to be fair? And here is what I am talking about.

Remember when the defense was put in, I got a stipulation from the government which they agreed that if Rivera were recalled to the stand he would testify that he had been told by Cortes-Rios, whatever his name was, he had been told by this other man that there had been someone who got sick on a plane, a courier on a plane coming back from California, one of the Machado brothers, and the brother was Wilfred Machado.

Rivera is telling you he had been advised it was Wilfred Machado that got sick on the plane.

Cruz is telling you it's Orlando Machado.

The question is then: even if you want to believe these liars, these con men, these cheats, even if you want to accept all that, aren't they contradicting each other now?

Rivera says it was Wilfred Machado, Cruz says it was Orlando Machado. Doesn't that give you a reasonable doubt? Doesn't that make you hesitate to act? Doesn't that convince you and doesn't your common sense now demand that you cannot be convinced beyond a reasonable doubt that Orlando Machado committed this crime?

That's what has come out in this trial. That's what they have given to you.

In a short time now, in a couple of days, you will be going into the jury room. Before I sit down I would like to issue a challenge. I do so now, and I ask you to join in that challenge.

I think I have given you three, four or five reasonable doubts here. I suggested these to you. I think they are accurate. You may have thought of other reasonable doubts or defense counsel may come up with other reasonable doubts that I have neglected to mention. You may have in your own mind other reasonable doubts.

I suggest to you, and I hereby challenge Mr. Moss here and now, to resolve all of these reasonable doubts, all of them. And he is going to have a chance, he will speak again tomorrow; all of them; not just some of them, all of them. Because the rule is in this court, and the judge will charge you this, if you have just one reasonable doubt about Orlando Machado when you go into that jury room, then you must acquit him.

It's not a question of whether you feel he is innocent or guilty. If you are not convinced beyond a reasonable doubt, if you have just one, then you must acquit him.

And I suggest to you, and I am challenging -- and I am not going to get a chance to speak to you again but he will -- I am challenging him to resolve all of these to your satisfaction.

If he fails on just one of them, then you must vote to acquit.

Again on reasonable doubt, the government must prove -- and it is very difficult to do this -- the government must present evidence to you, the evidence must prove the defendant guilty and then the evidence must prove him guilty beyond a reasonable doubt.

It is just exactly as though the government came to you, or Mr. Moss, trying to climb a lofty mountaintop, and he's got to do all of these. He has the burden, he has the obligation. At each of these stages, evidence of guilt and guilty beyond a reasonable doubt. If he falters just below the summit you must vote for acquittal. You must say to yourself, "He hasn't convinced me beyond a reasonable doubt, I have no choice then, then I must vote for acquittal."

He must carry this kind of a burden.

Again reviewing, and I will sit down in just a moment, I know you are anxious to get home, again reviewing this case very briefly:

There are three pieces of evidence that the government has given you on the substantive count against Orlando Machado: Benito Cruz -- and this is all.

You know, most of the time I didn't cross examine most of these witnesses. Did you notice that? The reason was that he didn't mention my client's name. There was no reason for me to cross examine. They didn't say Orlando Machado did anything. But there were three times that he was mentioned, and only three times.

Benito Cruz, and we have gone through his character and reliability. I suggest you can't accept that.

His voluntary statement in English. Again, I suggest you can't be convinced beyond a reasonable doubt by that.

And then the third time, the third time when Raymond Rivera took the stand, clearly twice identified him, my client, as Ferde, the heroin dealer. But through cross examination it was brought out, and then finally Judge Broderick had to tell you, and he did tell you, he is going to tell you again, to disregard that evidence completely, disregard it. It's a misidentification.

And this is the kind of a case the government has given you. And they say, "You be convinced beyond a reasonable doubt," when Judge Broderick has to straighten him out on that particular witness.

And I suggest to you if that happened then you can take that as an extension for the whole case. You can be convinced -- you cannot be convinced beyond a reasonable doubt of anything that is going on here. The case against my client is a very weak case, if it exists at all.

I suggest to you when you go into the jury room you cannot and will not be convinced beyond a reasonable doubt of my client's guilt and for that reason I suggest you must, must vote acquittal.

Thank you.

THE COURT: Thank you, Mr. Broderick.

Thank you, ladies and gentlemen of the jury.

We will adjourn at this point until 10 o'clock tomorrow morning.

(The jury left the courtroom.)

THE COURT: Mr. Moss, you had various objections.

You objected to Mr. Broderick's definition of the evidence that can be used against his client. This is something which I shall be dealing with, of course, in my charge.

I am not sure whether you objected to the statements with respect to police officers, but I did.

You objected to --

MR. MOSS: I objected to the fact that Mr. Broderick posited with you an opinion that Orlando

Machado needed an interpreter as though you had sat down and had some expertise as to Mr. Machado's fluency in English.

THE COURT: Then you objected to Mr. Broderick's reference to the fact that the government was paying for his interpreter.

I think it is clearly established it is inappropriate for a lawyer to identify himself as being appointed counsel and it seems to me that the same thing is true with respect to an interpreter.

However, I don't think any of these call for any corrective instructions at this stage.

I said that we would begin at 9:30 tomorrow morning, but I have a hearing tomorrow at 9 o'clock so we will have to begin at 10 o'clock tomorrow morning.

Mr. Mendes, I believe you will go next.

MR. MOSS: I think there is one corrective cure that is possible with respect to one of these objections, and that is the suggestion that you have appointed an interpreter in this case because you believe that Orlando Machado does not speak English.

I think in fact your silence on this matter will suggest to the jury that you agree with Mr.

Broderick in this regard.

It is my understanding that the interpreter was appointed because Mr. Broderick, on behalf of his client, represented that one was necessary.

There has been no testimony of Mr. Machado's English ability that has been sanctioned by this court or ordered by this court.

THE COURT: All right.

Yes, Mr. Broderick.

MR. BRODERICK: Well, your Honor, I think I pointed out -- I don't know my exact words, but I think I pointed out very simply that you had ordered an interpreter.

THE COURT: Rather emphatically, Mr. Broderick.

I will give some thought to that and perhaps I will deal with it in my charge.

Anything else, counsel?

Yes.

MR. CUNNIFFE: Yes, your Honor. I have a state matter at 9:30 tomorrow morning. I should be here very close to 10 o'clock, but in the meantime Mr. Figueroa has consented to cover for me.

I am not due up until after Mr. Mendes is finished.

THE COURT: Is that satisfactory to your client?

MR. CUNNIFFE: Is that satisfactory?

DEFENDANT SANTIAGO: Yes.

(Adjourned to June 28, 1977, at 10:00 a.m.)

3208 - 3445 (T2)

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MR. MENDES: I referred to narcotics, prior similar acts.

MR. MOSS: But without regard to whether it is correct or not, it is still improper.

THE COURT: I believe that that will also be handled by my charge, Mr. Moss.

MR. LANDAU: Your Honor, while the jury is being brought out, I would just like to pointout, with the permission of the court, once again Domingo Zayas' eyes have gone back to that same condition that they were at a week ago. Apparently he was supposed to have been brought to medical facilities away from MCC, and MCC has failed to bring him.

His right eye is, again, beginning to close up and it is completely red.

Thank you.

THE COURT: You are not making an application that he be excused, Mr. Landau?

MR. LANDAU: No, sir.

(Jury present.)

THE COURT: We will now have the summation by Mr. Cunniffe.

MR. CUNNIFFE: May it please the court, members of the prosecution staff, my fellow counsel,

gta3

ladies and gentlemen of the jury and Madam Foreman:

As they say in show business, I am following a tough act. Mr. Mendes was sensational.

But speaking of following, I was wondering if you have been following what I have been doing during this trial. I have engaged in a number of cross examinations and I have brought some witnesses here from faraway places, two from Puerto Rico, as a matter of fact, and I thought, and I hoped that it would become obvious to you, that I was following a particular line of thought. The line of thought was that Raymond Rivera, such as he is, indicated, after he had become a cooperating individual for the government and started giving them his life history, that he had first gone to the bank in Bayamon in the middle of October of 1974, before his fourth trip to California, and before he had done that -- this was just prior to his involving Carlos Santiago, my client, in the type of activity he felt was going on.

Now, the question was, when in October did he go to the bank in Bayamon. And he had told the persons debriefing him, Andres Amador, an agent, and he had made a written statement, a 32-page written statement, and in both, especially with Amador's statement, he had said that it was in the middle of October.

Now, he came here and I had an opportunity to cross examine him. And in that cross examination of him I had to twice take this written statement that had been supplied to me by operation of law and twice walk up to that stand and attempt to refresh his recollection. This was after he had testified that it was in the early part of October.

On cross examination he finally admitted, yes, it was the middle of October.

Now, I had a reason for this. I wanted to be sure when in October, 1974 he went to California on the fourth trip, supposedly brought back ten packages of heroin, nine ounces apiece, and supplied them in New York to Carlos Santiago and Luis Ramos.

Now, when did this happen?

Well, it was important because of the witnesses that were to appear here on behalf of Carlos Santiago, because in the cross examination and in the direct examination of Raymond Rivera, it became obvious that that transaction, the going from Puerto Rico to New York, the meeting with Gallardo, with William Cortes-Rios and the supplying of the money and the trip to

California, the purchase of the heroin, the trip back, the arrangements with Chequi to work with Luis Ramos and Carlos Santiago, and the actual sale during which Raymond Rivera supposedly went back to Puerto Rico for ten days, all of this would have to take about two weeks; his ten days in Puerto Rico, going to California, coming back.

That meant that all of this had to go down, had to happen in the second half of October, 1974. And the theory here was that it could not have happened, and Carlos Santiago could not have been engaged in this activity, because in the second half of October, 1974 he was not in New York, he was in Puerto Rico.

That's what all this was about. This is called alibi.

How this alibi got started is as follows:

This indictment came down in 1977. The defendant was arrested, Carlos Santiago was arrested, March 3, 1977 in Puerto Rico. He was arrested on the basis of information supplied to the government by Raymond Rivera. The information was just what I told you.

From March 3, 1977 he was faced with the following task: Find out where he was and what he was doing in October, 1974.

Now, I ask you, which one of us could do that right now, come up with documentary proof where we were almost three years ago and what we were doing?

He came to me and I sent him back to Puerto Rico and I said, "Find out. Get me some proof."

And then he came in here and we put on what is known as an alibi defense.

But let's see what I had to do to put this defense on for you.

I had to pin Rahmond Rivera down. It was so important.

He was engaged in marvelous footwork here, both on his direct and his cross.

On his direct, of course, he remembered everything. On his cross he became rather forgetful.

But when you are in that jury room, if you have any doubts about when and where Raymond Rivera was in the middle of October and when and where this fourth transactioninvolving Carlos Santiago and Luis Ramos took place, read my cross examination or have read to you my cross examination of Raymond Rivera. It will show you that he was reluctant, but finally admitted that it was from the middle of October on.

You know, this problem needn't have occurred, this problem of having to fight ab[illegible] when he was in California in October, 1974, because in October, 1974 he came to New York, he bought a plane ticket to California, he made a reservation at the Garvey Hotel in California, stayed there, bought a plane ticket to New York.

You have seen a lot of government exhibits in this trial, a lot of records, a lot of telephones. But have you seen any government exhibit indicating when he stayed at the Garvey Hotel or when he took those flights out and back in October of 1974?

You have seen none of this. And the burden fell to the defendant, Carlos Santiago, to pinpoint these activities. And we had to do it through close examination of Raymond Rivera and Andres Amador, who, by the way, is a government agent whom the defendant subpoenaed from Puerto Rico and appeared as the first witness in the defendant's case. I mean by that Carlos Santiago.

We had to get a government agent up here from Puerto Rico to get around the duplicity of Raymond Rivera, because it was he who finally said, when I showed him his report, "Yes, it was the middle of

October, 1974. That's what he told me, that's what I wrote down."

Now, there is no doubt about the length of the trip. It took two weeks. I think we pointed that out. When you discuss it, I don't think there will be any problem.

But there are a number of other witnesses here. I think we had 14 witnesses in this entire trial, but only one pointed a finger at Carlos Santiago, and that was Raymond Rivera, whose reputation in this courtroom, by the way, is now less than spotless.

Raymond Rivera said some other things in his testimony.

One, that he knew Carlos Santiago, he worked as punch press operator, or some type of operator, in Local 3, the electricians union.

By the way, that is a huge union. Local 3 is a very big local.

And when Agent Amador was here he indicated to you that, yes, he was the agent who debriefed Raymond Rivera about Carlos Santiago and that debriefing, in addition to saying the middle of October was when this transaction began by his going to a bank in Bayamon and then up to New York, that debriefing indicated a number of other things which showed up in Agent Amador's report. That was one of the many reasons that we had him here.

Raymond Rivera is testifying on his direct examination and his cross examination, yes, he knew Carlos Santiago, he knew him a long time.

But it became curious as to why in reports made out approximately a year ago, almost two years after this alleged activity took place, that in the report made out by Agent Amador Carlos Santiago is not named as Carlos Santiago, he is named as Carlitos, John Doe. In every place in that report he is Carlitos, John Doe, or John Doe, Carlitos.

As a matter of fact, Raymond Rivera said on cross examination that, no, he never gave anybody Carlos Santiago's name. He's a John Doe as of a year ago. And Raymond says he knows him.

Two other things came out in that report. They were the two descriptions given in the debriefing of Raymond Rivera of Carlos Santiago and they showed up, and Agent Amador had to remember them and read them after his recollection was refreshed. They are two descriptions given by one person, given of one person by the same man.

One is that he is five feet seven inches, 140 pounds, black hair, moustache, about 29 years of age.

About a month later, the same person from the same Raymond Rivera is now five feet ten inches tall, 150 pounds, black hair, 30 years old, no mention of a moustache.

This is the same person that Raymond Rivera is describing who Raymond Rivera is calling John Doe or causing the agent to call John Doe, and then he comes in here and says he knew him.

And you saw the people that came here on behalf of Carlos Santiago. Mr. Aponte, a factotum in a hardware store down there, a man who takes orders, writes out these orders, remembers that on October 21, 1974 Carlos Santiago came into his store and purchased building materials and signed for them.

And Mr. Aponte wrote up the order and he saw Carlos Santiago sign it. The bill that he signed, the invoice that he signed that day, went into evidence, and you can look at it in the jury room when you are deliberating. It is in evidence.

What about Carlos Santiago?

Here is a young man in his 30s, married, children, never been arrested in his life before. He can't work because of a severe disability, he had open-hear surgery, he has a valve in his heart. He can't live a normal life. He has to come to New York at least twice a year to see Dr. Rader to be examined.

And Dr. Rader took the stand and she explained all of this to you, and that when he does come to New York he comes to see her and he stays for two weeks, once for the examination and a week later for the results of those tests that are taken.

Agent Amador and Raymond Rivera pose the same problem; to get them to admit that Raymond Rivera had, from the outset, been saying the fourth transaction involving Carlos Santiago started in the middle of October, 1974 was like pulling teeth.

Those are the two men that I had to go up to and stick reports that they made or statements that they made under their noses. And Raymond Rivera still won't admit it.

I even pointed out the line on the page, and he still did not have his recollection refreshed so that he could tell you what he said. That was why Amador was here.

But from the two of them it was like pulling teeth. And finally it came out and you can have it in the jury room. It's in that transcript.

Now, we had some testimony from a Detective Guzman, who is a member of the New York City Police Department, who is assigned to a drug task force. He participated in the arrest of the defendant Carlos Santiago.

He indicated in his direct testimony that when he and approximately four other officers went to arrest Carlos Santiago they went to his house and Carlos Santiago went out the back and over a fence, and it later turned out that he surrendered himself. He went in voluntarily.

Now, a problem arises when some police officer gives that kind of testimony, that the man is fleeing because he is guilty.

Well, when you are thinking about that, consider two things:

This indictment was coming down because of some testimony that Raymond Rivera was giving to a grand jury and it was two and a half years after an alleged incident, and for all we know nobody knew that he was giving such testimony, and for all we know NOBODY KNEW they were indicted.

It's not like a man commits a robbery and three hours later the police are at his house and he runs away indicating some sense of guilt. This is two and a half years later. It is forgotten.

Consider the testimony he gave on cross examination as to the method they employed in effecting that arrest; five men get out of two cars, dressed in plainclothes, with no identification, and start going into a house, storming in, if you will, going around one side, going around the other side. And you can't say whether they had their guns out, because they couldn't see one going around one side and one going around the other.

I suggest to you Mr. Santiago getting out of there the way he did was an exercise in common sense rather than anything else. He turned himself in as soon as he knew what the problem was.

Carlos Santiago took the stand in his own defense in this case, and you heard him testify, and of course as judges of the fact you examined his demeanor, you made your own judgments about his credibility.

It came out that he was friendly with William Cortes-Rios, whose name you have heard a number of times in this trial; with Luis Ramos, also known as

Indio, and they were compadres, buddies, and they stayed together. They knew each other in Puerto Rico, they helped each other out. They have known each other for a long time.

Now, remember and keep in mind that persons who are friends, persons who know each other, are not necessarily conspiring to break laws. The mere fact that you are a friend of somebody does not mean that you go along with eveyrthing he does. And you might have nothing to do with it.

And don't infer from mere friendship an agreement or that they are in the same course of conduct. In fact, the opposite may often be true.

Now, Mr. Santiago also testified about when he met Raymond Rivera.

Rivera said he knew him from Lcoal 3.

I would give that no credibility, because if he knew him from Local 3 or if he knew him from any time previous to last summer, Agent Amador's report would have said Carlos Santiago, not Carlitos, John Doe, or John Doe, Carlitos.

There is no reason for him to be a John Doe, Carlitos.

He didn't know him. In fact, the first

timehe met Carlos Santiago was when Carlos Santiago told you they met, and that was in the Shangri-La Bar last summer, when he was there, when Carlos Santiago was there and William Cortes-Rios was there. And it was when Raymond Rivera was engaged eor the first or one of the first times in that course of treachery that has caused so much heartbreak. He went to that bar to set up William Cortes-Rios, and that's the first time that Carlos Santiago saw him or met him because he was in that bar. He might have seen him before, but he never met him before.

Raymond Rivera didn't know him before then, and that's why Agent Amador's report says Carlitos, John Doe.

What about this Carlitos?

We have heard some testimony about it. I don't know if it made any sense to you or whether it is distended.

There is an allegation that Carlos Santiago was known as Carlitos or that was his nickname or most people who knew him called him that.

Mr. Santiago has resisted this allegation. He doesn't like the name, but you can't help it, if you are Puerto Rican and you live in Puerto Rico and your name is Carlos, somewhere along the line somebody is going to use the diminutive, the term of affection and endearment, Carlitos. You can't stop people from using this. But you can minimize it. And I daresay, it might have been used once or twice. It has to be on every Carlos in Puerto Rico, and there are thousands of them. But he resisted that name.

Now, with respect to Mr. Santiago's testimony, he was here to tell you that he never had anything to do with Raymond Rivera or Raymond Rivera's schemes; that when Raymond Rivera said that Carlos was in New York with Chegui and Indio and they were distributing ten packages of heroin, Carlos Santiago was actually in Puerto Rico, the second half of October, on 1974.

On the 21st he saw Mr. Aponte at the hardware store.

Then in his own direct testimony Mr. Santiago also showed you that on the 25th he visited -- he took his dog to a veterinarian, and they gave him an appointment book and it indicated that there was an appointment for Carlos Santiago on October 25, 1974.

And, finally, he testified that he withdrew $2000 from a bank in Bayamon on the 30th of October, 1974 and there was a receipt, a withdrawal slip, and it was signed by Carlos Santiago on the 30th of October, 1974.

So he is in Puerto Rico on the 21st, the 25th and 30th of October, 1974. It's impossible for him to be involved in this conspiracy. He is alibied solidly.

And those three pieces of evidence, and they are in evidence, the invoice from the hardware store, the appointment book from the veterinarian and the receipt from the bank, are all in evidence and you can examine them at your leisure when you are deliberating in this trial.

The government produced a witness, Mrs. Sosa. She worked for a bank in Bayamon where all these people were bringing all that money to have it turned into bearer savings certificates.

When I cross examined her she shed a little light on the activities of Raymond Rivera.

Raymond Rivera started in his testimony with placing the time table or keeping it straight for you by saying that fourth trip started after he had gone to the bank in Bayamon with $50,000 in cash for William Cortes-Rios and to turn it into a savings certificate for William Cortes-Rios, and he went there alone. Then he says he came back to New York for the fourth trip.

That's how we locate the last half of October.

But Miss Sosa knows William Cortes-Rios rather well and she remembers this man who used to come with him named Compadre, and her description of him was to a T, it's Raymond Rivera.

But she says during this period that it is William Cortes-Rios coming to the bank alone -- well, not alone, but having somebody with him, but always bringing in his own money and having his own transactions, and he had somewhere like five or six of these bearer certificates.

She pointed out on cross examination that the first time Raymond Rivera started coming there alone was just before she resigned in May of 1975 and that he had one or two of these $50,000 bearer certificates, which I should remind you are still unaccounted for. If you wonder why Raymond was so well dressed, you now know.

I don't mean to say that Raymond wasn't in that bank in October of 1974. He was there in the midele of October, 1974, all right, but he was with William Cortes-Rios, and it was supposed to be William Cortes-Rios' money that he was there with.

He was in that bank, but, remember, he was lying to you again. He was burying or hiding 50 to 100 thousand dollars, and that's why he lied about saying when he went to the bank.

He went there in 1975, and Miss Sosa remembers because it was shortly before she resigned that he started coming alone.

Now, this pretty much sums up the testimony and the arguments.

You have seen Carlos Santiago. You have seen him on the witness stand. He has never been in trouble before.

Dr. Rader indicated to you that this is a very sick man, a very physically ill man. He'll never lead a normal life. He'll always be sick. He had rheumatic fever.

And you have heard all the evidence in this case, and you have also seen Raymond Rivera on the witness stand. Raymond Rivera is the only man who says that Carlos Santiago committed a crime. You have to believe his testimony in order to convict Carlos

Santiago. And I submit to you that you should not believe his testimony, not only because it has been shown in this trial that Raymond Rivera is above all else a liar and a perjurer, not only for that reason, but because Carlos Santiago was able to come forward and present you with documentary evidence that he was not where Raymond Rivera said he was when Raymond Rivera said he was there, and by that I mean he was in New York in the last half of October, 1974. He was not there, he was in Puerto Rico. And he was not doing what Raymond Rivera said he was in the last half of 1974, he was working on his house in Puerto Rico, and that's all I can say to you.

He doesn't know why this has happened to him. He sits over there. He is baffled. He finds himself in court because Raymond Rivera needs expiation. He needs to get the United States Government to forgive him for bringing in kilos of heroin from California. He needs to buy his way out of this thing and the more bodies he gives up, the better off he is, so he reaches. But he reached for the wrong guy, because Carlos Santiago -- and it is nothing less than a small miracle -- was able to reach back two and a half years and document his presence in Puerto Rico when Raymond Rivera said he was involved in this conspiracy in New York. That is solid documentary proof. You can have it in the jury room.

Raymond Rivera came here and squirmed and lied, but cross examination showed him for what he is, a liar.

When you read my cross examination of Raymond Rivera you will see that he is not worth one scintilla of belief, not one iota.

And I'm sure when you have considered all this in the jury room, and I hope you will consider it, you will find that Carlos Santiago had nothing to do with any conspiracy and that Raymond Rivera was deliberately lying; not mistaken, lying.

One final word.

We all ask you to consider our clients individually. Don't lump everybody together. Don't go in there and say, "Well, let's take it, are the nine guilty or are the nine innocent?"

Take every man and consider the evidence against nine men individually. Come up with nine verdicts, because there are nine defendants here.

And I'm sure when you have done this and you have considered all the evidence you will find

Carlos Santiago not guilty.

Thank you.

THE COURT: Thank you, Mr. Cunniffe.

Mr. Stokamer.

(Continued on next page.)

MR. STOKAMER: May it plese the Court, fellow counsel, members of the jury, good afternoon. Some of the witnesses who testified in this case, Richard Sirota, do you remember him? He was a chemist. He didn't say anything about Antonio Morales at all.

Juan Roman, do you remember him? He was a policeman. He said nothing about Antonio Morales.

Benito Cruz, he was on the stand for a couple of days. He didn't mention Antonio Morales at all.

Raymond Rivera, the same.

Luis Rodriguez, the same.

Then there was someone named Hoekler. He didn't come. One of the prosecutors read his testimony and the other one made believe they asked the questions. Do you remember that little scenario? The same.

Raymond Vallely, about two weeks ago? The same.

Marie Sosa -- I don't want to make light of this, but I am just trying to show you in some graphic terms that maybe you will remember. This is the problem that we have here. I can do the same with the indictment. The indictment runs some 15, 16 pages. It has 29 counts. Now, some of the counts you have no concern with at all. But even the ones that will be submitted to you, very little of it has to do with Tony.

The first count, which runs four or five pages, it has the means of the conspiracy, the objects of the conspiracy, lists of names. You can look at it. It has nothing to do with Tony, not a thing.

Overt acts. Overt acts means things they say were done in the course of the conspiracy. That runs six pages or so. There are 44 of them mentioned. Of the 44, Tony Morales is named in one, number 19. The rest is just verbiage.

Number 19 reads:

"In September, 1974, in New York City, the defendant Antonio Morales, a/k/a Tony the Mechanic, received approximately 1/4 of a kilogram of heroin."

And I will discuss that with you. I will deal with it. But I just want to have you get an idea of what we are talking about.

Count 2, Count 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, nothing, nothing, nothing. Finally we get to 15, and this is the second time that Antonio Morales' name is mentioned. This is a substantive count. The overt act was only part of the conspiracy count. Count 15 says:

"In September, 1974, in the Southern District of New York, Antonio Morales, a/k/a Tony the Mechanic, the

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defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a schedule 1 narcotic drug controlled substance, to wit, approximately 1/4 of a kilogram of heroin."

The wording, the legal wording, slightly different, but both of them say in September, 1974, in New York, Antonio Morales is charged with having a quarter kilogram of heroin. So even that is just meaningless. So we can just throw this away. I won't bother to tear it up, but will put it on this pile.

Now, remember, at the beginning of the trial Mr. Moss and myself, we were talking about pieces of a puzzle. Well, what Mr. Moss has done is he has collected these millions of tiny little pieces and he has given you the box of pieces and he says, "Folks, it is all there. All you have to do is try and put all the pieces together. When you do, you got a picture of beyond a reasonable doubt against Antonio Morales."

I am going to try and take two or three little pieces, two or three little pieces that are in this box and discuss them with you and show you how they don't prove Antonio Morales guilty of anything. But, please, try to remember when you are discussing this case and when you are deliberating that you have to take the pieces of each particular puzzle. I suggest to you that it is no coincidence that you had been thrown this whole box of pieces, because if you were given only the pieces against Tony Morales, it would be a laugh, the trial would be two minutes. Raymond Rivera would get up on the stand, he would spend a half hour telling about his criminal activities, he would spend a minute and a half charging sales to Tony, and you would laugh him out of court. But hearing witness after witness after witness and seeing pieces of paper after pieces of paper after pieces of paper has to make an impression. And it is for you, each and every one of you, to pay attention to me and the other attorneys and watch every little piece of testimony and every piece of evidence and scrutinize it.

I'm not suggesting that it is the quantity of evidence that is the only important thing. Of course, it is also the quality of the evidence. But let us keep things in perspective; let us see what we have to deal with.

I am going to start my remarks and I am going to speak to you about the case against Tony in general terms, and then I am going to go to specifics. If what I say to you makes sense to you, if you think it rings true, it is in line with your experience as mature, adult people who know how people act, then people save it, because there are going to be a lot of other lawyers who are going to talk after me, and the Judge will talk after me, and you are not going to be able to use it until you get into that jury deliberation room. And the only way that I can, in effect, get into that room with you is if I give you something that makes sense to you and if you remember it. And when you are discussing the case, you can bring it out.

The only witness who testified to drug transactions in the case as to Tony Morales is Raymond Rivera. And I am not the only attorney who has stood here and said that to you. And you will see that it is no coincidence. You have to decide whether you can believe that man and convict another man based on what he says.

Who was Raymond Rivera? What was he? Essentially, he was a smalltime crook. He had had minor scraps with the law. He managed to keep out of jail the first two or three arrests, convictions, whatever they were. Finally he was caught on a misdemeanor. He did six months on the misdemeanor, if you recall. That had to do with stolen cars, documents, and after that he finds himself arrested, but not just arrested on a smalltime misdemeanor, but for giving drugs right to the hands of an undercover salesman -- undercover officer, right into his hands, cocaine and heroin. In June, 1975, it was that he was arrested.

And he told you it took until February of 1976 before he pleaded guilty and decided to cooperate.

"Do you remember the time that you were facing?

"Never occurred to me. I never thought about the time.

"No.

"No.

"Oh,really. You could get 15 years.

"No, never occurred to me. Sure I knew other people in the drug business who got five years and ten years."

I had to literally drag it out of him.

"But time, I never thought about it. It was not my concern."

Now, you are sensible people, I hope. Does that make sense to you? Do you think he was being candid with you? Do you think he was being honest with you when he said that? Can you conceive that could possibly be the truth? He had spent six months for a tiny little misdeanor in jail, and he had been giving drugs right into the hands of an undercover agent. He said, "No, that didn't go into my reasons for cooperating."

Supposedly threatening calls, not from anybody here, heavens, no, from somebody else. Well, I submit to you that is just not in line with your common sense. That is not the way people think. And I urge you to reject that. He thought, whatever his reasons, that that was the appropriate thing for him to say. Perhaps he saw the arguments that were coming. He is trying to sell you something. He is trying to convince you. That is why he said that.

Let us see really what was his position in February of 1976. February of 1976 is when he decided to plead guilty and cooperate. As of February, 1976, the record in this case indicates Fernando Gallardo had been arrested. He had been arrested back in January, 1975. Officer Burbage testified to that. Raymond Rossy had been arrested. Benito Cruz had been arrested. Hector, the Mexican, the guy with all the stuff out there, Hector had been arrested. Moises Maldondo, Gilberto Torres, Wilfredo, Paco, also known as Paquito, Rafael Gonzalez, Puton, Ramoncito-- all of those people had been arrested or had otherwise been caught, those people who had sold to undercover agents. Put yourself in Ramon Rivera's position. What is he going to get? Obviously, if they are going to go to bat for him on sentencing, which you know they did, they are not going to take from him what they already have. They are not going to take what they already have. Basically, they had the whole gang already. And perhaps that was his reason for joining the bandwagon. But they had Rossy already, they had Cruz already, they had all of those guys already. So put yourself in Raymond Rivera's position. You got to talk your way out of jail. You got to get the government to go to bat for you. And you are not going to get them to go to bat for you by giving them what they don't need, what they already have. So whom did he come up? He came up with, basically, the boys from the old neighborhood, the boys that he knew from the lower East Side. Because he can't pick strangers. He has to sell the government that he knows what he is talking about, so he can't pick somebody off the street whom he knows nothing about. He has to pick people whom he knows, give a name, give a list that he drew up, maybe some of his friends, so he can provide this background information that would lead the government to believe what he says. And he also was very clever. He picked people who he thought -- and to a large extnet he was right -- the government would be quick to believe him about.

Now, what do I mean by that? You remember Raymond Rivera testified that he grew up in the lower East Side. He testified that Tony Morales, Tony the Mechanic -- stand up Tony --

(Defendant Antonio Morales stands.)

-- was a mechanic on the lower East Side. He knew him from the lower East Side. In fact, I think Raymond Rivera said that everybody knew him in the lower East Side, and that Tony was one of the neighborhood people. Let me stop there for a moment.

Raymond Rivera also testified that he started selling drugs in August of 1974. That was his testimony. September, maybe. But that period of time. And that he sold to Tony, as he sold to other people from August on, August of 1974. Put that to the back of your mind for one second as background information, and I will discuss that in greater detail with you in a little while.

You remember the testimony about the apartment on the lower East Side, on East 6th Street, when in December of 1973, that is, December of 1973, a year before Rivera said he started selling, and maybe a year and a half or two years before he got arrested -- you remember the testimony her that in December of 1973 there was a search warrant executed on that lower East Side apartment and seven people-- well, six adults and one child were in the apartment -- and heroin was found in the apartment. Tony Morales was in the apartment. Remember that? Well, do you think it is inconceivable that Raymond Rivera when he started looking for names, what will they believe, do you think it is inconceivable, "Tony Morales, I know he was in the apartment two or three years ago where there was heroin found. He is a natural." After all, they were both fixtures on the lower East Side. They both grew up there.

I will give you another example.

Carlos Santiago. Why did he pick Carlos Santiago? Because Raymond Rivera had seen Santiago once with William Cortes-Rios. So it is a natural. And that is why you have so many defendants in this case who have nothing really against them, other than the testimony of Raymond Rivera. That is why. And that is why lawyer after lawyer has come up here and said, "Forget everything else. Raymond Rivera. Raymond Rivera." I'm not suggesting to you that Raymond Rivera was not in the drug business. I'm not suggesting that. Just the opposite. He was. But, basically, everything he knew was already known, and he knew he had to come up with people, names. He had to come up with people, names and people that the police didn't haven't. He had to show himself as someone bigger, more important than he really was. From smalltime crook he makes himself in charge of the lower East Side. He is a bigshot because he has to say that to sell his story. And that is why there is so much trouble in him answering on cross-examination, remembering anything but the essentials of a story, "I sold it to him." "I went to California." Ask him anything, any details, and he folds.

I'm not suggesting to you he never went to California. I am suggesting, though, he did not go as many times and he didn't do what he said. Please try and pay attention, please'. Please! You have to use your common sense. And one of the things that you are going to ask yourself, is there any corroboration of what he says. Some things there are corroboration to, because I am not suggesting to you that he made everything out of air. No one can do that. You have to weave the truth with the lies. He had some trouble testifying about when his first trip was -- August, September, October, the first week in August, the second week in August, because he got caught up. He made out a trip and he made out sales that month when it was physically impossible. So he had to change the time. He falls back. "Well, it is a long time ago." "I don't remember." "Maybe I'm off a month." "I don't remember."

Forgetting about the time element, I would like to call your attention to his testimony concerning the first trip to California. Before I do that, bear in mind these things that he said. Number 1 that basically he had been a smalltime crook, he had never seen more than three or four thousand dollars in his entire life before. And that was only in connection with the job in the travel agency. He said sometimes over the weekend he managed to collect three or four thousand dollars. So that was the most money, really, he had ever seen. He had never seen any drugs, to speak of, in his life. He said he saw a little bit that his brother was taking. And he told you about these August trips, and after August. Before that he had never really seen any drugs. That is what he said to you. And also as to California, no, he had never been to California before. All of this was brand new. All of this was a brand new experience for him.

Think back in your own minds to some really significant event that occurred in your own life. Maybe your wedding day, a vacation to Europe; perhaps a graduation, a child's graduation; something along those lines. If it was something that really made an impression upon you, can't you look back on that day and just about remember everything? Just about everything? Maybe some of the details, no. But the significant things. Think back in your own mind to a significant day in your own life and see how much you can come up with. You don't have to strain for it. It is right there, because it made such a big impression.

Raymond Rivera testified he went to California. And what did he say? He said there was this suitcase, William Cortes-Rios' suitcase, and he has $25,000 cash in that suitcase. Now, this is his first time. Don't you think if things were as he had said and you were in his place, you would never have forgotten that? That is a significant event. He is not saying, "Money means nothing to me." But this is the first time he saw a big amount of money, $25,000. Do you think if that were so he could ever forget that? There was this opening of the suitcase on the bed of a motel. "Holy cow, $25,000!" But yet when he talked to Agent Amador last summer -- and he spent days with Agent Amador, just about every day with him, Rivera said that he spent a lot of time with him -- did he say to Amador, "We went there for drugs and there was this $25,000?" No, he said $40,000. Now, I'm not saying to you it is significant whether it was $25,000 or whether it was $40,000. It does not make any difference. But if it really happened the way he says it happened, do you think that he would remember that differently? Would you?

He also said that, "All of a sudden we are sitting in this hotel room." Now, this is the first time for him, sitting in this motel room. "Rios goes out, makes

a call from the public phone booth." This is Mission Impossible stuff? Right? He comes back. All of a sudden there is a knock on the door. Hector, the Mexican is there. Now, here is Raymond Rivera, this is significant to him, this is bigtime, he is just a small time crook, these are the major leagues now. In comes Hector with Baby. They open it up. And at the trial what does he say? He said, "11 packs. 11 packs right there before my eyes." But yet in the Grand Jury he said 14 packs. And his only explanation, "Well, I remember it differently now."
r2 Isn't that the kind of thing that would stick in your mind? He could have said, "I don't remember. There were a lot of packs." But he said 11.

I just want you to compare it with what Marie Sosa said. Remember the woman who worked in the bank? She remembered. They came up to that room and they counted $50,000. And Maris Sosa works in a bank, but it is a big thing. It is something you don't forget that easily. It makes an impression.

There are many, many other significant contradictions, and I can't go into them all. But remember he testified they wrapped the heroin up in sheets at the Garvey Motel and they came back to New York. He said that they arrived at Kennedy, and he said at page 2311 Mr. Moss was asking him questions. He said they left the airport and took a taxi. He said he took a taxi to one of the bars. He didn't say "Maybe," "Could be," "The best I can recall," "Best I can remember." What did he say on cross-examination? And this is also going to show you how his mind works. Page 903.

"I ask you what you told Agent Amador was the way you got back from Kennedy to Slugger Ann's?" That is the same trip, the first trip. He said on direct that he took a taxi to Slugger Ann's. And in the question he sees there must be a reason for that question, a reason for the lawyer asking that question. He says, "Yes, I told him we probably took the '66 Chevrolet they use in the organization.

"And that William Cortes drove you?

"Right.

"And that is what you told him?

"Yes."

And then he hems and he haws, because he remembers the last time he said he took a taxi and this time he says he took an automobile that William Cortes drove, a '66 Chevrolet." It doesn't matter what they used if they really want. But this is his first trip. It would not make any difference if he said, "Yes, I remember we came back to the airport. We had drugs. We got into a taxi" or "We got into a Chevrolet." But he tells it differently because it never occurred to him. In his own mind he is going to make himself a bigshot; he has got to get himself going out there with a lot of money, getting a lot of drugs and coming back and distributing it. And the little details are not there because this is not true recollection. Of course, every time you tell something that happened you are not going to tell every little detail the same. I am not suggesting that that is the case, but significant things you will not forget.

And how did he act when he was confronted with contradictions in his own testimony? Was he candid with you? Was he honest? Did he say, "Well, maybe I am a little confused"? Did he say, "Well, I really don't know"? Did he say, "My recollection is better today than it was a year ago?" Did he say, "Well, my recollection was better a year ago than it is today"? No. Did he say, "That is the best I can recall"? Did he say "Maybe"; "It could be"; "Probably"?

And I urge you to consider his demeanor and the way he answered questions and decide whether you can believe what he said, because he beat around the bush. Would you in your everyday business life or home life have somebody come into your living room, tell you a story, and then when you asked him questions and he was unable to come up with details, or came up with self-contradicting stories, would you believe what that person told you? You would say, "Garbage. The guy is telling me stories."

Remember a simple thing like how much he paid down for his house? That is a simple thing. Everybody remembers how much a down payment is for his house if they purchased one. Well, once he said $12,000, once he said $17,000. And he would not say he is mistaken; he tried to jog around. Is that the type of candid witness who is really trying to give the best that he can recall the way he said it was? He knows or feels what he thinks in his own mind he wants to do.

Does it make any sense to you that he never thought about his sentence when he was sitting there in court? Does that make any sense to you at all?

Remember when he talked about his drug addiction? He absolutely refused to say how much he took or to give any idea of how much he took:

"Q At the height of your addiction did you have to use it every day?

"A I don't say every day. Just when I need it.

"Q Well, I'm asking you, when did you need it? How often did you need it?

"A When I feel like I needed it.

"Q And how often would that be?

"A I can't tell you how often I needed it."

Can you believe that?

What about that Rodriguez boy? He knew exactly how much he had taken. Any addict would.

Raymond Rivera couldn't even tell you if he needed it every day or not.

He couldn't tell you, or he wouldn't tell you?

Remember when he came back he said he started selling the heroin and there came a point where he counted in Paquito's apartment or another apartment $88,000?

That's a lot of money, $88,000.

Listen to this on cross examination:

"Q How much money was finally counted?

"A Approximately over $100,000.

"Q When you say approximately over $100,000 would you give the jury a range of what approximately means?"

Because to him approximately 88 means approximately a hundred.

"A Well, approximately that money.

"Q It was more than $100,000?"

I'm trying to pin him down.

"A Yes.

"Q Do you remember being asked these questions and giving these answers just last week, on May 26th, at page 258, by Mr. Moss."

In other words, he is being confronted with something he said a couple of days ago, not a couple of years ago, a question that Mr. Moss asked him:

"Do you recall how much money there was that was finally counted?

"A Well, the money was about $88,000."

That was two or three days apart. Mr. Moss asked him questions and then on cross his memory changed.

"Q Has your mmeory changed now or is your memory now over $100,000?"

His answer to that is, "No, sir."

And then he goes on to say -- he tries to explain.

He says, "Well, some of the stuff was given on consignment, so when I say over a hundred I'm saying that the stuff was given on consignment, I'm adding that in, so it's 88 plus the stuff that was given on consignment and that's how I reached the figure of over $100,000."

But he was asked how much money was actually counted.

It doesn't matter if it was 88,000 or 100,000 or a million.

How did he testify? Did he seem to you to want to tell you the best that he could recall, or did he try to want to squirm and field the questions and get around there and outsmart the lawyers.

Well, this isn't a contest of who is smarter and who is not smarter. If he were an honest witness he would testify and let the chips fall where they may.

Even when it comes to the period between trips, on direct he said three or four days and on cross he goes crazy. Between the first trip and the second trip he can't even give us an estimate.

"Q How much time was there that passed from the time that you first went on your first trip until the time that you went on your second trip? How much time passed by?

"A I can't remember exactly.

"Q Would you say it was about a week, more than a week, less than a week?

"A I can't say to you exactly because I don't know."

He wasn't being asked for the date and the hour and the flight number, but in general terms. Yet when Mr. Moss asked him questions, bingo, bango, bingo, he had every answer, because he knew in his own mind and he wasn't going to be confused by Mr. Moss, Mr. Moss was going to go chronologically.

But on cross examination, when he is hit from here and hit from there and things are new to him and the lawyers are new to him and the questions are new to him, he just falls apart because he is not telling the truth.

I am not suggesting that Mr. Moss did anything wrong, not at all. It's immaterial. He's the one with the warped mind, Raymond Rivera, because he's out there selling. He is trying to sell you.

Please bear with me, please, please.

Remember he testified that in November he went on a trip to California and that he walked out and he bought postcards for his wife. They were brought into -- they were brought into court. One of them said, you know, "Love you, Honey." They were all picture postcards. You saw them. They didn't have any substantive messages in them.

You know, "This is the Farmers Market," and the like. There were three or four of them.

Do you remember them? They were all postmarked November 1st.

Go back to your own common sense. Raymond Rivera is trying to tell you he is a businessman, he goes out to California on business; he started going out there on business in August or September.

Well, on one of the trips, thedthird trip,

277A

the fourth trip, anyway, it was in November, he stops into the store and, "Love you, Honey," sends a couple of picture postcards.

This wasn't a new place that he had been. According to him he had been there a number of times before.

Is that how a businessman acts in a place that is humdrum to him?

If he would have said, "My first trip, I walked around, I saw the Farmers Market and I bought these picture postcards and I sent them off to my wife; this is the Farmers Market, this is the hotel, this is this," that makes sense.

But the guy goes there on business every week, every two weeks, or whatever, and he buys picture postcards?

And it wasn't like he sat down and he wrote his wife a letter: "Listen, Honey, I'm waiting for this guy."

Maybe he doesn't even say that, he has some time to kill, he sits down and writes a letter to his wife killing time. That is understandable.

But, no, it is two-word messages, "Love you, Honey." "This is the Farmers Market."

He did that to kill time? Does that make sense to you? Is this in line with your common, everyday experience?

Well, maybe November 1st was his first trip.

Now, the prosecutor is going to say to you, "Well, we have a September call to Aurora Ramirez." Aurora was his girlfriend.

Well, that doesn't prove anything, because we are not saying he didn't know Cortes-Rios. He knew what was going on before November. It's not unlikely that Cortes-Rios would call in September. But the picture postcards were sent in November.

Now, if this makes sense -- if it doesn't make sense to you, if you think I'm out of line, forget about it, throw it out. But if you think that might make sense, keep it in the back of your mind and bring it up.

His story is crazy. It makes no sense at all when you look at it.

Now, Mr. Moss got up here and he went through January, February, March, this, that, this, that. Of course, because he didn't question what was said. Mr. Moss' previous summation was based on the direct testimony of what the witnesses said.

What corroboration is there with the other evidence? There is none. There is none.

We are getting through it, folks. I just finished the general portion. Please try and bear with me, please.

I know, it's been two days. I know one o'clock is lunch, but please try and bear with me. It's very important. All right.

What did he say about Antonio Morales? Well, he said he went in August or September, he came back, he sold. He didn't say that he sold any of it to Tony Morales on the first trip.

Then he said he went again, he made another trip, a second trip, and he says that he sold to Tony Morales, Tony the Mechanic, from the second trip.

Listen to the direct testimony. This is the testimony that Mr. Moss elicited from him concerning that:

"Q When did you distribute the remaining packages of heroin from that trip?

"A Next day," meaning the day after he came back, or next day from something anyway.

"Next day, next day about 1 o'clock in the afternoon, a person came to the apartment that I was staying with Chegui, and this guy's name is -- I know this guy's name as Tony the Mechanic. He came to the apartment, he says, 'Hello, Tony.'

"Know him before. He's a mechanic and I used to go to the place he works.

"He says, 'I came down here because Fernando and Cortes send me down here. They told me you the man. So I need something.'

"I says, 'What do you mean they send you?'

"He says, 'Well, I work with them before so they send me down to get some heroin from you.'

"Q Who else was present during this conversation?"

This is the questions Mr. Moss put to him.

"A Was another guy, another person came with Tony that I don't know him."

Then he goes on and points out who Tony the Mechanic was, and he says he went to Chegui's and he picked up the drugs.

There were no maybes, no probablys, no "Best that I can recalls," he tells it like he remembers it; Tony came in, he came in with another guy, he goes through this conversation that supposedly happened.

It's simple, direct, forthright.

What happened on cross examination when he is asked about the details of it?

Last year he told Agent Amador everything he knew about the drug trade, about all his exploits. That was last July. He spent months with the guy before they finally wrote it down. And when he told Agent Amador about that second trip he told him everybody who supposedly bought from him, but he did not say that a Tony the Mechanic bought from him, because Tony the Mechanic didn't.

Last summer, when he sat down with Agent Amador, they sat there at a desk for months and they finally reduced it to writing, he accounted for everybody who he says bought his second trip, which may or may not have been made by him. But in any event, he didn't mention Tony the Mechanic.

Is his memory better today than it was a year ago. Is it better in court while he is facing strangers than it was in an office with Agent Amador, whom he had seen every day for months?

And when he was confronted with it, how did he act? How did he act? Did he act like a witness who is trying to tell you the truth?

Well, his excuse was, "Well, maybe" --

his excuse here, when he was confronted with what he told Amador, maybe it wasn't the second trip, maybe it was one of the other trips.

"Q You told Agent Amador of all the people who you distributed the heroin to from the second trip, right?"

"A" -- he sees it coming -- "The best that I recall at that time.

"Q And the best that you can recall at that time did not include Tony the Mechanic, did it?"

Well, he's stuck there.

"A That's right.

"Q From the second trip?"

Because this guy, you got to pin him down.

"A Oh, from the second trip. Yes, yes, that's what I'm saying now.

"Q And your recollection is different today than it was a year ago, right?

"A That's what I recall at that time, that's what I told the agent."

Is that -- is that the type of witness who you could believe,who is trying to tell you the truth, who is really trying to search his memory, who is telling the truth?

Why a contradiction like that?

He didn't tell Agent Amador it could have been one of the trips; he said that when he was hit with it. That was his excuse.

On direct he said a man came with Tony; never seen the man before. Do you remember that?

Well, on cross he forgot that part of his story altogether.

"Q Who was in the apartment when you say you sold him drugs?

"A Mr. Chegui."

Chegui was, according to Raymond Rivera, his partner.

"Q Who was there when you say you sold drugs to Tony Morales, Tony the Mechanic, as you call him?

"A Chegui, the guy that works for me and deals the heroin with me. He definitely was there.

"Q Was Norberto down there?

"A Could be. I can't recall.

"Q Do you have any recollection?

"A No.

"Q Was Chegui's wife there?

"A I can't recall.

"Q Do you remember the day of the week it was?

"A I can't tell you the day of the week because I don't remember.

"Q Did you say whether it was a weekend or a weekday?"

He doesn't even mention the other guy who on direct -- "He came in," on direct, "with another guy and I never saw him before."

I had to remind him. I had to remind him.

On direct he said it was 1 o'clock in the afternoon. Simple. He didn't say approximately, it could be. Simple, about 1 o'clock in the afternoon.

"Q How long were you in the apartment before you say he came into the apartment?

"A Maybe it was -- could be an hour, the whole day; maybe I sleep there. Who knows?"

Who knows? That's a good question: who knows?

"Q You don't know, do you?"

"A Maybe I sleep there that night, maybe I was -- maybe it was early in the morning. I can't tell you. How come I going to remember that? I can't remember."

This is supposed to be proof beyond a reasonable doubt.

Do you remember those two little pieces of paper? That's what they are talking about, September of '74.

Do you remember the business with his hair? Maybe you don't remember, there has been so much testimony.

"Was his hair the same? Look at that hair.

"Stand up, Tony."

That's an Afro.

He says, "I don't remember hair. No, his hair's the same."

Do you remember the officer who testified? The officer only saw him once in his life.

He said, "Yeah, he had close-cropped hair at the time, now he's got an Afro."

Well, sure, that's a big difference.

Hey, when did you get the Afro? Hey, look at that?

Isn't that something that would stick in his mind? It stuck in the officer's mind.

It's not just a contradiction of insignificant details. That's the point that I am trying to submit to you. It's a basic untrustworthiness of the guy's story, basic.

He never told Agent Amador about millions of things that he came here and he testified, and then when he is confronted with it he doesn't act like an honest witness. His story just doesn't hold up. It's not the way things happen in your everyday experience.

Think about it. If it makes sense to you, try and remember it.

Is that beyond a reasonable doubt?

He said that he sold drugs to Tony in January. He said he personally sold drugs to him in January.

"Which Tony?"

"Tony the Mechanic."

"Did you receive the money for this heroin?"

"Yes."

On cross examination, when he is asked about the same thing:

"Q Did you personally give it to Tony?

"A Well, I was the only person that I always give it personally.

"Q You always gave it to him personally?

"A I always personally give it to him."

Page 949.

Well, he told Agent Amador that Iglesias had sold it to him. And when he is confronted with it how does he act? Does he act like a honest man?

"Q Isn't it a fact that you told Agent Amador that Iglesias sold a pack to Tony after you got back January 7th and it wasn't you? Isn't that true?

"A Probably.

"Q Isn't that true?

"A Let me see."

He gets the report.

"A Where is the paragraph, sir?"

He's not going to get tricked, "Where is the paragraph, sir?"

"Q I am showing you page 22 of Exhibit 3501E.

"Is that correct?

"A Show me where it is, please.

"Q Here (indicating).

"(Pause.)

"A Yes."

He's stuck.

After he found the paragraph, the exact paragraph, that's when he'll answer. That's when he'll say, "Yes."

But he says he always personally hands it to him, but he told Amador Iglesias handed it to him.

"Q Does that refresh your recollection?

"A Yes.

"Q And you told Agent Amador Iglesias sold it to him, not you, is that correct?

"A Well, he got the authority to sell the same drug.

"Q You told Agent Amador that Iglesias sold it and not you, is that correct?"

What does he go back to?

"A In that time I recall that."

In that time he recalls that.

"Q And how you recall that it wasn't Chegui who sold it; now you recall it was you who sold it, right?

"A I -- most of the time I sell the heroin to him."

From "Always give it personally" it becomes "most of the time."

"Q What about this time?"

Listen to this answer:

"Maybe I did it, maybe my lieutenant, means the guy who was helping me."

Maybe not. That's what the reasonable doubt is all about.

How can you believe that? How can you convict a man based on that?

It's a lame, lame case.

Remember Mr. Figueroa's example about the TV set? Would you buy a TV set from him?

Well, after this trial is over and some day in the future if you are walking down the street and Raymond Rivera taps you on the shoulder and says, "Hey, remember me?"

"Yeah, I remember you."

"Listen, I'm a little short. I got a $5 check. Would you cash for me the $5 check?"

Would you cash a $5 check for him? Would you give him a dollar to go and buy cigarettes for you and expect him to come back with the right change?

If you would hesitate to cash a $5 check, how can you not hesitate to convict?

Everybody realized it was a nothing case, and in fact if all of these people weren't here with

Tony, Rivera would have been laughed out of court.

So what does the government do? They try and corroborate, if you will, or make the case as strong as possible.

I agree with Mr. Figueroa, Mr. Moss is an excellent attorney. He's very good. Because only an excellent attorney could take Benito Cruz, Rivera and these guys and make it look like a case.

The government realized that there is nothing from August, 1974 of that Raymond Rivera story, there is nothing there. So what do they do? Try and corroborate. Bring in the heavy dirt, the heavy tanks, Robinson, Raggett.

They are talking about a seizure in December of 1973, a year before any of the testimony that had to do with Tony Morales, in an apartment where Tony, five other adults and a kid were, and they talked about heroin being seized there.

Is it embarrassing? Yes, it is embarrassing.

But how does that corroborate what Rivera said?

Well, it shows that he was in an apartment where there were drugs.

All right. But really, really, it has nothing to do with this case.

And let me show you how the police realize this, the government realized this.

They say that they went into Tony Morales' apartment. That's what they say, they went to Tony Morales' apartment.

Did they look at the lease to know it is Tony Morales' apartment? No. Did they talk to the super to ask whose apartment it was? No. Did they go to a real estate agent? No.

How do they know it was Tony's apartment? "The secret informant told me."

If they really wanted to do a job, how hard is it to go down to the super or to go to the landlord, the management agent?

And remember, they said -- Patrolman Raggett, he held up a bag, "This was a bag that was thrown out the window, the powder was shaken out in the air."

That was on direct examination.

And on cross, Robinson, the other officer who testified to the same thing, was asked, "Did somebody throw something from the window?" and he said, "Yes."

They didn't say that they didn't see it

on direct, they just said: Well, this was what was done, it was thrown out into the air. Until they were asked by me, they never even told you there were seven adults in that apartment -- six adults and one baby. They never told you that. They are trying to create an impression.

They weren't lying, but they were trying to create an impression that he was alone in the apartment.

And what happened when they were asked by me about who threw the package out the window?

They said, "Well, we don't know because we didn't see anyone throw it out."

Do you remember that?

Well, so first they say that it was thrown out of the window. When they were asked, "How do you?" they said, "Well, I don't know who threw it out, I didn't see it."

Then when I dragged it out, "Well, somebody told you they threw it out?"

"A Yes.

"Q And the person who told you it was thrown out, that person also told you that it wasn't Tony the Mechanic who threw it out?"

And finally he has to admit it.

Why didn't he come up and say it on direct? Because he wanted to create an impression for you; because if he actually didn't know who threw it out, that's it; when Mr. Moss asks him, "Who threw it out?"

"I don't know, I didn't see it."

But, no, it's thrown out. Then when he is asked who threw it, then he goes "I don't know." That shows that they are trying to do whatever they can.

I mean I -- withdrawn.

This drug seizure, in a way, is very damaging because it throws mud. But that's all it does, it does throw mud.

Yet on the other hand it explains to you Raymond Rivera's mind, that he had heard about it, and that's why he could say Tony the Mechanic, because he knew it would be embarrassing, and it's hard to make you think about this case and not about something else.

Do you remember that testimony about one of the officers testified that he saw Herman -- he saw Tony the Mechanic drive up on 14th Street and get out of his car and go into a Strauss Store?

A Strauss Store is where mechanics buy

parts. What could be more natural than that? The store was on East 14th Street. Right?

But the officer comes in and tells you he drove up alone and there was another car, Herman Rosa.

Herman Rosa was also from the lower East Side.

And they said some words and then they went into the -- then Tony went into the Strauss Store.

I mean, what is that if not trying to make you find him guilty by association? Because the officer was asked, "Did you see him do anything wrong?"

"No."

"Any transactions take place?"

"No."

"Anybody give anybody money?"

"No."

He was honest.

"Did you overhear the conversation?"

"No."

"Anybody arrested?"

"No."

"Anybody charged with anything?"

"No."

They are trying to bring every little thing they can because they realize that Raymond Rivera is worthless as a witness.

Why weren't there fingerprints taken of those packages that were taken from that apartment? Wouldn't that show who had handled it?

Why wasn't there any undercover sales or attempts with Tony? Because it would have been fruitless.

Why is it that Tony Morales' name and telephone number was not in one, single scrap of paper, not one address book?

They had Gallardo's books, Cruz' books and all the others.

Why is it that Tony Morales' name or telephone number was not in one of them, not one? Why? Because he wasn't involved, that's why.

Isn't it interesting that everybody used the name brown rock heroin, brown rock heroin.

Do you have one of the packs there, any one?

MR. MOSS: I have about 11 pounds.

MR. STOKAMER: 14?

Brown rock.

Now, if you looked at it and hadn't the word before, or even if you had heard the word before, and you had to describe it, would you call it brown rock?

Well, maybe. Maybe you would.

Pebbly? Maybe.

Beads? Maybe.

But isn't it interesting that every single person got up from there and called it brown rock.

Where are the rocks? They look like pebbles. Every single witness.

Except for Mr. Moss, who in his opening called it a pebbly substance. I am not going to call you that.

No Garvey Hotel records. You remember Rivera supposedly going from August to September to October to Garvey Motel. There wasn't one record introduced to you. Doesn't that indicate to you, well, maybe he didn't go. Maybe November was the first time he went. Maybe that's why he had so much trouble with the times. Maybe that's why other defendants ould say where they were in Puerto Rico or buying houses or building houses when Rivera said he was selling them drugs in New York.

Maybe that's why the government in its own summation said, "We suggest to you that Rivera, when he says he went in August, is wrong; he went in September."

The government, Mr. Moss, the prosecutor, is a very honest man, because if he were not honest he would have taken Rivera in the back room and said, "Listen, let's straighten this out."

But Rivera is the corrupt one.

The agents, he said himself the agents paid him for drugs, reimbursed him for drugs, after he was cooperating.

At that Christmas party that he talked about he couldn't say and he didn't say that Tony Morales was there, because there was something that you could check upon.

Cruz also testified about that party. Tony Morales wasn't there and he didn't mention it.

The business with the bail bondsman, remember, on a $75,000 bail, a stranger, a bondsman took a $12,000 collateral. Can you believe that?

That bondsman wouldn't have cashed a $5 check for him either.

No set way that Raymond Rivera was paid for his drug trips? "No, whatever they wanted to give me,that's what I took."

Crazy.

This business about the guilty plea; the judge never told him,and then when he was confronted with the plea, "Oh, yeah. Well, maybe he did tell me."

He was not an honest, candid witness, telling you the good and the bad; he was trying to sell you something.

There was no corroboration for what Raymond Rivera said, and don't be fooled when they try to bring in that December nonsense and say that that's corroboration.

I'm finished. I'm finished. Just let me say this:

If anything I said makes sense to you -- it is going to be hard, I know it's going to be hard. There are a million lawyers saying 10 million words. Every one of us has spent a lot of time thinking about this, and every one of us has something for you to help you decide this case. That is what every single one of us, Mr. Moss and every single defense lawyer, is doing here, knocking ourselves out for: to help you decide this case. If anything I said to you makes sense please try and remember it and bring it up when you start deliberating.

You, ladies and gentlemen, are really the cornerstone of democracy, and it sounds corny but I don't feel corny saying it, because in other countries, at other times, the government could come in and accuse and wave goodbye.

Here you are standing between the government and Tony Morales. You are his only protection. You can say to the government, "We will not convict on testimony of perjurers and thieves and liars and people who are talking and telling things for the worst of motives." You can do that. Only you can do that. Because the government is trying to do just that in this case and you are his only protection. You can tell the government no.

You can never give Tony Morales what he deserves for the disruption in his life, for the ordeal of this case, for having to sit there day in and day out and worry, the anxiety. You can never give him all he deserves. But you can give him the least he deserves.

I trust that you will find him not guilty of the charges.

Thank you.

THE COURT: Thank you, Mr. Stokamer.

Ladies and gentlemen, we will take our noonday recess and we will reconvene at 2:30.

(Luncheon recess.)

301 A

T7 MR. LANDAU: Your Honor, because of my close proximity to the jury and also because I had been sitting in two different places, I have noticed throughout much of this morning the same problem that was noticed by a number of attorneys yesterday, that juror number 5, the gentleman on the jury, throughout much of the testimony appeared to be sleeping. In addition, I got the feeling that juror number 7 -- I saw a great deal of her back -- and I think your Honor was closer to her and would best be able to know whether she was ill or not. I was not sure, but I got the feeling that possibly there is something wrong with her.

THE COURT: Let me read a note which Mr. Linn and Mr. Mendez and Mr. Broderick gave to me, a joint note:

"I would request a voir dire after this summation of juror number 7. She has not looked up since we (defense attorneys) have started summation. I think she has her mind made up and has for weeks. Thank you for your consideration."

That will be marked as the next Court exhibit.

(Court's Exhibit 5 marked for identification.)

MR. LANDAU: Your Honor, based upon what these other attorneys noticed, I would move for a disqualification of juror number 7 and that the next alternate be seated in her place.

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MR. LINN: Your Honor, as you know, we selected the jury by majority in conference. I think perhaps if there was any action on that, I would like to speak to the defense attorneys about it.

THE COURT: You can take any action you want. I deny the motion. Because a person listens to testimony with eyes closed, rather than open, or if a juror does something while argument is being made, I am not going to entertain a motion to disqualify. I have seen nothing in the behavior of juror number 2, and I have been watching her since I got that note, to indicate anything other than she has her own unique way of listening to the testimony. So far as juror number 5 is concerned, he is very close to all the attorneys who have been talking. It may be that he closes his eyes so that he can hear without being disrupted by constant motion. But I certainly see no reason to disqualify either juror.

We will recess to 2:30.

(Luncheon recess)

AFTERNOON SESSION

2:30 P.M.

(In the absence of the jury.)

MR.BRODERICK: Your Honor, can I extend to Mr. Linn the same courtesy that I extended to Mr. Mendez concerning the transcript?

THE COURT: Yes.

(Jury in box.)

THE COURT: We will continue with the summations.

Mr. Linn.

MR. LINN: Your Honor, members of the jury, the prosecution, fellow defense attorneys, good afternoon.

I know it has been a long process. We have almost finished, probably by this afternoon, so please bear with me. His Honor told you at the beginning that you as jurors have a very sacred duty. I know it has been drummed into you time and again. I can't stress the importance. A man's liberty is in your hands in this case, the defendant, Jose Velasquez. I represent Mr. Velasquez. My job is to present my case. My job is to make sure that you understand based on the evidence that the prosecution has not proved its case beyond a reasonable doubt. You have heard that standard, reasonable doubt. That standard was not developed lightly. That standard was developed through years and years of experience with dictatorships, totalitarian regimes. It is an important criterion. What person could stand up against the government, against an accusation if the government were not required to prove the case beyond a reasonable doubt?

For instance, let us say Mr. Raymond Rivera hypothetically accused me of receiving heroin from him in August of 1974, or one of you, and I didn't take the stand. Maybe I had trouble with the language, maybe I didn't look right, would you convict on his word? Or would you have a doubt? Would it be a reasonable doubt? Wouldn't you acquit? Is one man's word sufficient to convict? That is basically what exists in this case. Is there heroin here? Not one person he allegedly transferred heroin to has that heroin been brought into this courtroom. All that heroin that you saw on this table came from whom? Benito Cruz. Others. The heroin that you saw in this courtroom has nothing to do with the heroin Raymond Rivera said he transferred to these defendants. That heroin does not exist. It didn't happen that way.

Why is this case going on when there is no heroin? What kind of case is it? What happened to the heroin?

Let me digress a little bit -- no, let me go back. The heroin that has been shown here in this courtroom came from whom? It came from the conspirators. There was a conspiracy. There is no doubt in my mind that Fernando Gallardo went to California and got heroin, he and his team, Benito Cruz, Raymond Rivera, Raymond Valentine, Raymond Rossy, Hector the Mexican from California, Fernando Valenzuela, Hector's brother were involved in bringing heroin in. They were caught. Most of them were caught selling directly to agents. Raymond Rossy, 4 kilos. The heroin was there. They were caught red-handed.

What do we have here? We have some guy getting on the witness stand and saying he gave heroin to somebody some time. Ladies and gentlemen, I sat here for some six weeks. I sat next to Mr. Broderick, a defense attorney. If I told the District Attorney, the United States Attorney, during the course of the trial twice I supplied Mr. Broderick with a little heroin, and I took the stand and I said it, maybe Mr. Broderick for one reason or another did not take the stand, would you convict on that? Could you convict on that? You could not convict, you would not convict if Mr. Broderick is a respected member of the community. And even if I were an Assistant United States Attorney and I took the stand and I said I gave him heroin, you would not believe me. Why in this case would you do it against these defendants? Because

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there is this smokescreen tha is laid, this talk about heroin. And I am as sick of the stuff as you may be. The stuff is filth. Yet you have seen a lot of heroin here. And you were asked to form a judgment on that. Is Jose Velasquez guilty of what he is charged with? I think you have to look at all the evidence.

What is the evidence against Jose Valesquez? Undercover police officer Roman came into court and testified. He testified that on two occasions, April 12th of 1974 and May 23, 1974, he bought heroin from Jose Velasquez. No doubt. I agree. Admitted. Acknowledged. He testified Jose Velasquez was caught, arrest, and he is serving jail time for it, substantial jail time. Roman also testified that on June 3rd, the same year, he went to see Jose Velasquez in a bar. Angelo Roche happened to be there. And what did he try to do? He tried to buy an eighth of a kilo. This is from a man he bought from on two other occasions. Jose Velasquez trusted him. If he could have gotten the eighth of a kilo he would have sold it to him. There is no question. He couldn't. He couldn't get that amount. He didn't have the connections. Does that sound like a man involved in a conspiracy involving hundreds and hundreds of pounds of heroin? He could not get four ounces.

What does Raymond Rivera say? "I gave him half a pound on one occasion, 18 ounces, half a kilo." Is that true if this man could not provide the quantity of one eighth of a kilo? Think about it. It is important. Are you going to convict a man in this courtroom now on a charge that he has already been convicted of, that he is already in jail for right now? I hope not. That is not what our system is based on. Our system is based on trying a man fresh for the crime he is charged with. Give him the benefit of your experience.

I will tell you a funny thing that happened to me. This case started over Memorial Day weekend. The first witness testified and then we put Memorial Day off. I went to Bucks County for vacation. I was with my girlfriend and we checked into the Holiday Inn and one night we were going out to the Bucks County Playhouse to see a play. And I showered and I came out and we were rushing, because I was late, and I noticed that the maid had left the pass key on my television. I didn't have time to drop it off. I said, "Okay, we will go to the play. We will come back and then I will drop it off." This case was on my mind, it was fresh on my mind, and I was driving along. And I began to think, what if it wasn't me, what if it was somebody else who had a burglary conviction a year before, and somebody broke into some of the rooms while I was out, and then they searched all the rooms in the hotel and they found that key. What chance would I have? Would a reasonable doubt hold up? Would it hold up if I did take the stand? Would that be sufficient circumstantial evidence? There was that key. My past burglary conviction would be revealed. I would go to jail. I would be innocent.

Another incident is when I went to a flea market and I bought something. I didn't get a receipt. If the sales girl had said that she had not sold that, what chance would I have had? Would one person's word be sufficient to put me in jail for that? Granted I was an attorney. Let us take it that I am not an attorney. Let us take it that I have not had the background I have. Let's say I grew up in the lower East Side. That is the situation here. Wouldn't I go to jail?

Roman's testimony, sure. Jose Velasquez sold him heroin. Now, Mr. Moss on his summation did say something that was incorrect. I reviewed the transcript. I am sure it was inadvertent. Roman testified that he bought heroin from Jose Velasquez on two occasions. As to the first time he didn't testify at all about the kind of heroin. As to the second, he looked at the package and it was brownish. Mr. Moss said it was brown rock heroin. That is an assumption that we can't make. That heroin didn't come into this courtroom. No chemist came in to testify about it.

Now, as to Tony Morales, they found some heroin on him in 1973. You saw it. It was held up to you. You examined it. It was brown. I don't know what kind it was. You looked at it. I never looked at it. Fabian Rodriguez, they brought some heroin in. You got to look at it. A chemist came to the stand and testified about it.

Where is Jose Velasquez's heroin that he sold? How do we know it is the same kind? We don't know. Why wasn't it brought in? What was the reason for that? We are trying to tie him up to a conspiracy to distribute brown rock heroin. Could you say that you are sure beyond a reasonable doubt that it is the same brown rock heroin?

Raymond Rivera testified that at this time there was another kind of dark heroin, a blackish heroin going around in New York, and he told you who sold it. He said it was being sold by a guy named Chino and a guy named Orlando. Who is to say whose heroin that was? There is no connection between Jose Velasquez and Fernando Gallardo prior to the time Raymond Rivera says he came and gave him some heroin. You can't make that assumption. It is wrong. Jose Velasquez was punished for the crime of a sale to an undercover officer on two occasions. I told you before he is in jail. He is serving substantial jail time. Don't try him again for that crime; try him for what he is charged with here, and what he is charged with here is a puff of smoke. It is Raymond Rivera's testimony. God, what if Raymond Rivera accuses one of you and that was it, would you put yourselves in jail? Don't you think you would have a reasonable doubt? Put yourself in this defendant's place. What can he say?

Okay, here is what he can say. Some time in August he was in Puerto Rico. He knows he went down to buy a house, at least, to have it designed. I asked Raymond Rivera when he took the stand, "When did you come from California?

"Some time in August.

"The middle of August?

"Could be.

"The end of August?

"Could be.

"Was it the 10th of August?

"Maybe.

"The 11th of August?

"Maybe.

"The first week in September?

"Could be.

"How could you account for your time?"

I tried to figure out when it was that he said that he gave him the heroin. I thought it turned out to be the 16th to the 20th, that he said on direct. I thought that was the set date. So I spoke to Mr. Velasquez and I spoke to his family and I found out he was in Puerto Rico then. I said, "Do you have any papers?" And he showed me some paper, and I called Puerto Rico and I spoke to a witness and he flew up. The witness told us on the 15th and on the 22nd Jose Velasquez was in his office in Ponce. What more could we do? Should we account for every day of every month during that month? And all of September too? What should you do? Can you be convinced beyond a reasonable doubt that he gave him heroin on some day some time? In August? Or September? No. And why does he keep changing the dates around? Why on direct does he say the 16th and then he says the 10th? Why? He knows damn well if he said a date certain, some defendants would not have been in New York. That is why. And he could not take that chance. He sold the government a bill of goods, and now he has got to scram to substantiate it, and that is what he did.

I will ask you what was the government's oversight in this case? You heard about hotel records of the George Washington Hotel. They went there and got them. You heard about hotel records about another hotel in California. They went there and got them. Agent Amador could have said to Raymond Rivera, "What name did you use when you went to California?

"I used Joe Smith."

Okay, pick up the phone, call the DEA office in California.

"Send someone to the Garvey Motel and find out when Joe Smith was there." They didn't. What could we do about it? We didn't have the day. The closest we could come to is the 16th to the 22nd when my man was in Puerto Rico. But after that he came back from Puerto Rico obviously. And what did you hear? He got arrested for sales to Police Officer Ramon and he went to jail for it. And he got out on the 24th. So from the 15th to the 24th he was unavailable. It could not have happened then.

Do you think he went to Puerto Rico the first day and ran to the architect's office? No. Common sense tells you he arrived before that.

Now, Benito Cruz said absolutely nothing about Jose Velasquez being in this drug conspiracy. He never sold drugs to him. As far as he knows, his partner never sold drugs to him. He had no information that anybody in the Gallardo organization sold drugs to him. Nothing. And then Benito Cruz had a list, a list of Gallardo customers. You can get to take that list in with you. Is Jose Velasquez on that list? No. And why isn't he on the list? The list was made up before, while the conspiracy was going on. Jose Velasquez was not a customer. He could not be on the list. He was not a Gallardo customer, period.

There was a meeting, he said. There were a bunch of people sitting in a bar. That is what Benito Cruz said. And what were they discussing? They were discussing Benito Cruz's partner's arrest and the informant that put him in. What has that to do with this case, the fact that a bunch of people are sitting around a table and one of them was Fernando Gallardo? They didn't discuss heroin. He said so. They didn't discuss dealing. He said so. They discussed Jose Rivera's arrest, and remember at the time, at the time of that discussion I asked Benito Cruz, "Weren't you and Jose Rivera rivals of Gallardo? Didn't you have your own distribution at the time?" He said, "Yes, we were rivals. So what does this mean, this proof? It means nothing. It proves absolutely nothing. It is as flighty as the fact that in 1977, two years after the conspiracy stopped, they found a car in Puerto Rico with Jose Velasquez's papers in it.

What does that mean? It means that Jose Velasquez knew Angelo Roche. So did I. If I were to go to jail for every person I knew that got into trouble or had been tied into a conspiracy, I would be doing a million years. I know most of these people. My father had a business in the lower East Side. Association alone does not mean anything. His Honor will instruct you as to that. Knowing somebody, being with him, that is not conspiracy. He will tell you that. What is conspiracy? He will give you all the details about conspiracy. It is what common sense tells you it is, a plot. That is what conspiracy is.

Now, you know the boys that were involved in this conspiracy. You have heard it. Fernando Gallardo, Benito Cruz, Raymond Rivera, Raymond Rossy -- all of them, the ones that made millions and millions of dollars. Here is a small time dealer who gets busted on the lower East Side for making a stupid undercover sale, and now they insist he is a member of this conspiracy. Well, he is not. There is no proof that he is. They would not have let him in, anyway. They were not going to cut the apple up so many ways. They wanted to keep their millions.

And, by the way, where are all the big money people? Well, you heard that Fernando Gallardo fled. Who knows where he is living? On some island somewhere.

And where are the others? Well, they are the ones who had the money and didn't testify for the government, and the other big money people who are testifying, and they are all going to be set free. Who is left? Some poor shnooks who Raymond Rivera picked out, because he heard that they got in trouble. They can't defend themselves because they have been in trouble. That is why. Don't you think he knew that Jose Velasquez got arrested in the state system? He heard about it. He lived in the neighborhood. I knew about it. Everyone in the neighborhood knows about it. Information moves quickly in those neighborhoods. Everyone knew he was arrested; everyone knew he pleaded guilty; everyone knew he was going to jail. What a better patsy for Raymond Rivera? The same thing with some of the other defendants. He had to pick patsies, because Cruz and Rossy and the others had been busted and were in jail. Who was left? People who were in trouble, people who were in jail, that is who.

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And he was smart and he is cunning and he bought himself out of jail. He sold the government a bill of goods, and they bought it, and they spent a lot of money to bring this case on.

And what do they have? They have nothing.

They brought a lot of heroin in and it belongs to nobody here, except things that didn't have anything to do with Raymond Rivera's distribution. None of that heroin is in this case. All that heroin belongs to other people.

Now, I am going to ask you, I am going to beg you, there are all different kinds of prejudice, all kinds of prejudice that is involved in a criminal case. Do you know what kind of prejudice it is? The kind of prejudice which prejudices a jury against a man accused of a crime.

You come into court, you see a defendant, you hear the charges read; horrible. Guilty.

I'm not above it. I have done it myself.

Before this trial started I walked into the Supreme Court, Manhattan, sat down, I was listening to a case. What kind of a case? A rape-sodomy case, and the victim was a 13-year-old girl, and a guy stood up and there was the defendant.

I said, "Terrible. They should tear him apart."

That's not the way the law works. The man is innocent until he is proven guilty.

I was being prejudiced against a man simply because he was charged with a crime. I didn't hear the evidence. I would have torn him apart with my bare hands.

That's a terrible way. That's not the American system. Maybe it was the wrong man. Maybe there was a mistake. Maybe it was his twin brother. I didn't listen to the explanations. I condemned him.

I was mistaken. I realized how terrible that is to be so mistaken.

There is another kind. You are walking along and there is a crowd of people. A cop runs out and grabs somebody, hauls him away. You would say, "Oh, they got some criminal."

You have no idea what happened. You have condemned him. You have seen it. I have done it. I have to catch myself.

I am asking you as a jury, don't make that mistake.

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You have seen heroin, you see a defendant. Don't be fooled by the volume of heroin. None of it is charged to my defendant, Jose Velasquez.

All those kilos and pounds, 40 pounds in California, 20 kilos here. What is he charged with? Very simple.

Raymond Rivera says he gave him heroin twice. When? I don't know.

Amounts? "Could be two packs, could be three packs, could be one pack; I don't know. I told Agent Amador one or two, now I'm telling you two or three. What difference? I gave it to him."

Plenty of difference. Those are the things that make a jury certain or not. That's what creates reasonable doubt.

I beg you, think about that testimony. His is the only one that has to do with defendant Jose Velasquez ever touching heroin.

Now I have to digress just to refresh your memory and I promise, I won't be long with this. I want to give you some idea of what kind of a witness this man was.

You have heard so many others. I will take a few minutes. I will review a few questions and answers, my cross examination. Excuse my pride.

"Mr. Rivera, you testified that you didn't know you could have gotten 15 years on each count, is that correct?"

Referring to when he pleaded guilty.

"I don't know how much they going to give me."

"You know you could have gotten jail time?"

Precisely, I think.

"You know you could have gotten substantial jail time if you didn't cooperate?"

"I can't tell you because I didn't run the bench."

Then he goes on -- I go on:

"And you didn't think abou it, is that correct?"

"I didn't think about it, how much they are going to give me."

"You weren't concerned with jail time at all?"

"No."

Do you think that's true? You have seen the kind of man he is, a man who spends $500, $1000 a week on cocaine, he's got his wife in Puerto Rico, his girlfriend Rose in New York, he's got some little Mexican girl he is protecting that he refused to get involved in the case, that he told Agent Amador she distributed for him.

On the stand he said, "Well, she was involved."

"Involved indirectly?"

"She did it."

The man wants his freedom. He's a playboy. He wants to run around. He's got plenty of money now.

Do you think he only made $75,000? That's what he testified: "I made $75,000."

How does that add up? Twenty-three to a lawyer, 20 or 25 on cocaine, 17 for a house, 10 for a car.

Then he must have done some figuring in his head because I started asking him, "How much did you spend on heroin?"

If he spent that on cocaine, how much do you think he spent on heroin? It adds up to more than $75,000. He couldn't have. He likes to live it up. That is not counting restaurants and parties and the money he gave his wife.

He made a fortune. The man distributed 100 pounds of heroin. He made a fortune and it is buried somewhere. And after this is over he is going to laugh at everybody. He is going to laugh at the government and he is going to laugh at everybody.

The government bought it, he is trying to sell it to you, and you are going to sock it to somebody. I beg you, don't. Listen to what went on.

Bear with me a little more. I want to show you what kind of witness this man is and what his testimony was and whether you are not convinced, whether he convinced you, whether you have faith in him.

I asked him about the scheme doing hot cars in the Dominican Republic. Okay? I asked him, "Was this part of a scheme to bring hot cars to Puerto Rico -- I mean, to send them to the Dominican Republic?"

He is getting cagey now. He is wondering where the trap is.

"What do you mean scheme?"

So I explained it:

"Was this done previously? Did these people do this before? Was this the first time?

gta7

"A This was the first time I know was stolen.

"Q They didn't do it with another car?

"A I don't know.

"Q You didn't participate prior to this?

"A No, sir."

In other words, he is telling you this is the only time he did it and he got convicted for it. That's what that means, doesn't it?

Okay. You know what I did? I started asking some other questions and then I went out and did some investigating and I came back to court and I asked him again the next day, and here are my questions:

"Q You say they bring papers and they use names. That indicated it happened more than once?

"A Yes.

"Q And you were involved more than once?

"A That time? Yes.

"Q So you didn't do it only one time?

"A And the papers a couple of times.

"Q So before you lied on direct" -- I said "direct"; I meant cross -- "on direct when you said only once?

"A There are papers down there that I did it

gta8

once.

"Q How many times did you help proceed with the papers?

"A I think I recall they bring a few papers and I brought it down and ship a few papers."

He didn't do it once, he lied. He didn't know what to answer so he lied. And that's what he usually does.

And there are plenty of others. I have to go through more.

Remember, a man's future is at stake, Jose Velasquez. His future is in your hands. I beg you to bear it in mind. I beg you, don't convict him on a prior crime which he has been punished for and serving time for.

Oh, I knew Jose Velasquez was in Puerto Rico, so I tried to get a definite date. Do you want to hear how it is flimflammed around, or do you remember it?

I asked him:

"On August 13th?" referring to when he first started selling in New York.

"I don't know if it was the 13th, the 12th or the 10th."

"If you left August 11th to go to New York --"

Then he interrupted.

"I don't recall saying about that date, I [illegible] around that time.

"A specific date?"

"I can't say whether 10th, 11th, the 15th."

"It could have been anywhere from the 10th to the 15th?"

"I don't know."

"Do you remember testifying you came back to New York and started selling heroin on the 16th?

"August 16th?"

"You started selling heroin in New York from the first trip?"

"Yes, in August, '74."

"On the 16th or 17th, that you testified?"

"I don't know if it was the 16th or the 15th. I know it was in August."

Okay, I'm sure you remember it. I tried very hard to get a week time, any time, some period of time. I didn't want to fly a witness up from Puerto Rico if he was going to testify it happened the 6th. Couldn't get an answer. Couldn't get an answer to so many questions.

You know, you can have testimony read back to you. I don't think it's necessary. I think you can recall this testimony. You can recall how he slipped and slid.

How about when he testified that he was involved in drugs since 1972? That's what he said, involved in drugs. Then he realized that might not have been so good to say.

He testified to that in a previous trial. Another attorney asked him has he been involved since 1972. He said, "Yes, I have been involved since '72."

He came here on direct and he said he started in 1974, he never did anything before 1974.

So I cornered him. I said, "Didn't you testify that you were dealing drugs in '72?

He said, "Oh, no, I was involved."

"What's involved?"

"Involved means I used to watch. I used to watch them deal. I used to follow my partner Paul around in the social club, I went to a bar with him and I used to sit there while he did drug deals. I didn't sell any, I just sat there."

Meanwhile, he is making $110 a week at the gtall

time. That was his testimony.

All these drugs are going by him and he never caught a piece of the action? Does that sound like the man you heard?

I mean, the man was selling hot cars, a man who ran numbers, a man who jumped into the heroin business in a few days of consideration.

William Cortes-Rios came down, asked him about it, he said, "I need a few days to decide whether I want to be a major heroin trafficker."

In three days he decides, "Yeah, I'll be a major heroin trafficker, I'll go to California and bring it back and deal in it," with no drug involvement before.

Get serious. Isn't he a liar? I know he's a liar.

The evidence shows he is. Excuse me.

Okay. I don't think it is necessary. I can recall a lot of them. And if you don't believe me you can have it read back to you.

The first time he went to California he told us he brought back 11 packs, he told Agent Amador a different figure.

He said, "Well, approximate."

Another time he said he brought back 14 packs on direct, he told Agent Amador 17 packs; approximately; 14, 17. Fourteen is near 17. He is talking about 27 ounces of heroin. Approximate, give or take.

That's more than this defendant is charged with. His memory doesn't remember 27 ounces of heroin. That's a heck of a lot of heroin. That's $70,000 worth of heroin.

Here is a man on his first trip to California, the first time he has been involved in drug business, according to him, and yet he can't remember 27 ounces of heroin? "Either way, give or take, what's the difference? I know I had heroin."

Can't remember $15,000? "Either way, give or take; can't remember."

Sure he can't remember. It didn't happen that way. He was a small-time lackey -- here's the truth -- who wasn't really involved. He might have carried a suitcase. And then he got next to William Cortes-Rios, he saw William Cortes-Rios was making a pile of dough, got involved with a little bit of heroin, started buying from Benito Cruz, bought four ounces, two packages, then tried to go down to Puerto Rico and do it again and got caught. But he was friends with William Cortes-Rios so he knew all the names. That is his compadre. His compadre confided in him. That is a close relationship, one of the closest, so he knew what names to use.

Fernando Gallardo, he probably met him when he was with William Cortes-Rios. He bought from Benito Cruz.

He wasn't what he said he was. He had to make up a story in Puerto Rico to get him off the hook.

He already knew all the names, he already knew they were all in jail, he already knew they were in trouble. He figures, "I give them some more names and make up some story, I'll get off the hook."

And they bought it and they didn't check it.

And then Mr. Moss tells you, "We substantiated the story. We brought in some credibility witnesses. We brought in Miss Sosa. She is substantiating what Raymond Rivera said."

What did Miss Sosa say? She never saw him in the bank before January of '75.

"And you mean he didn't come in with William

Cortes-Rios?"

"No, William Cortes-Rios always came in alone. He might have seen friends there, but he always came in alone. He didn't come with anybody."

Raymond Rivera says the first time he went with William Cortes-Rios to the bank Miss Sosa was upstairs helping them count $50,000. Miss Sosa doesn't remember that.

You don't think you would remember the gentlemen who were there with $50,000? You don't think you would remember if a guy who you might have a crush on, and he eventually became a boyfriend, brought a friend with him? He would stand out in your mind and you would remember the friend he brought with him, especially the $50,000.

Why? It didn't happen. Miss Sosa substantiates it.

Raymond Rivera wasn't in the bank before January, 1975.

And what does that mean? It means the rest of it is all garbage. The rest of the testimony stinks. He wasn't this big dealer and he didn't distribute heroin to these people and not to Jose Velasquez, who if you pinned him down to a date, if he could have gotten some kind of a date and we could have figured it out chronologically we might have had an alibi.

Now, one other thing. Eventually, when Raymond Rivera got caught, he got caught in Puerto Rico. He decided to deal his way out of his trouble, work for the agents. They send him back to New York: "Catch some people."

You heard that he caught anybody? No, he didn't. Why is that? All his connections were in jail, that's why.

William Cortes-Rios was already in trouble, Gallardo split. That's why.

Why didn't he go up to one of these people, one of these defendants? Why didn't he go up to Jose Velasquez and say, with a mike on, with a NAGRA mike on, and say, "Hey, Jose, Cowboy, you remember the heroin I sold you in 1974, in August, it was good, wasn't it? Do you want to buy some more?"

Then the government could play the tape, Jose would have said, "Yes, it's good," or, "No, it's not good," and we wouldn't have had all this trouble. He could have substantiated his story right then and there. Did he do it? No. Did anybody suggest it? Maybe, but he knew he couldn't do it. It couldn't be done. He could have gone around to all his customers, his alleged customers and got them to make some statements to him and had it on tape and we could play the tape and you could hear it.

No, he went back to New York. And what did he come up with? Nothing. Why? Because what did he start with? Nothing.

He conned them into getting him probation, he conned them into being out of trouble, he conned them by naming names, and now he is trying to con you into convicting them.

He was caught red-handed. That's the kind of case that he had. He was caught with the drugs. That's fair.

What can you argue? When a man is caught selling the drugs he goes to jail.

But what kind of a case is it when somebody says, "I gave somebody drugs three years ago, I don't know the date, I'm not sure of the amount."

And where does he put this big transaction? Joe's Bar on Avenue D.

People there? All over.

"Where did you hand it to him?"

"Right in the bar."

"Were you worried about cops?"

"No."

"Did you look for cops?"

"No."

Baloney. The man is full of baloney. He would have done anything to stay out of jail and he did. And who did he pick? You have heard it before. His friends, his neighbors, people in his community, those in his community who had been in trouble before. That's who he picked.

Could his story have been checked? Yes. His airline tickets could have been gotten, his hotel reservarions could have been checked. We could have the hotel thing brought in.

We could know when he was in California, if he was in California in August or September or when or ever.

Yeah, we know he was there November. He sent postcards back postmarked.

Then you heard about that. That's a real heroin trafficker, sending -- taking time out and sending postcards to his wife. I don't think so.

But let me ask you: Can you be sure?

Don't you have some reasonable doubt about his story? Do you buy it hook, line and sinker?

Isn't that the criterion, whether you have a doubt that is reasonable?

You listen to the man. Can you believe him?

You have heard the analogy, if he were a butcher, if he were asked to cash a check. How about if he were a used car salesman, would you buy a used car from him? Would you trust him? I don't think you would.

If you wouldn't buy a used car from this man without having another mechanic check it and tear it apart and check every piece would you convict on his testimony?

I ask you when you get a chance, if you have any doubt, go through the testimony. See how he answered my questions.

"I can't remember; I don't know; could be; maybe."

Please, it's important. When we leave this courtroom, you in the jury, me, the defense team, the prosecution and his Honor, we will go on to our daily lives. His Honor will try another case, you will go back to work, Mr. Moss will try another case, we will all try other cases.

Jose Velasquez has to live with your verdict the rest of his life. Are you going to convict him on a prior case that he was convicted for already? Or are you going to judge him on Raymond Rivera's testimony?

If that's the case how can you possibly convict? How can you possibly convict on the word of a liar, a cheat, a thief, a conniver? And that's what he is. He's no good.

One more thing, and you have heard it before. You have heard the misidentification of Orlando Machado as the man he sold heroin to. You have heard it was a misidentification.

You saw him stand up in court, point to that man and say, "I sold heroin to that man." You heard him say it under oath. He swore to it.

It was a misidentification. He was willing to say it because the man was sitting in the courtroom. God, if I were sitting in the back and he thought I was Orlando Machado he would have said it was me, or any of you. He didn't care. He would say anything to keep himself out of jail. He doesn't care what he says. Anything that has this much truth in it he'll say.

He would have pointed to anybody. He didn't care. And he pointed at the wrong person. He made such a mistake that you were told to disregard that identification.

He did it more than once. He confirmed it. And he was wrong. And why? He's a liar. The testimony substantiates it. The man is no good.

You saw him on the witness stand. You saw what kind of a man he was. You saw what kind of answers he gave.

A witness who wants to give truthful answers and who stands up and wants to do the best he can has nothing to evade. He doesn't duck. He stands up and he tries to remember.

On direct he rattled out those answers, boom, boom, boom. He was prepared that way. He knew in his mind what he was going to say.

I am not saying Mr. Moss prepared him, I am saying he prepared in his mind that way.

On cross examination what happened? Well, he testified before so he had some indication of what it was before, and also we delved into areas he wasn't ready for. What does he do? He squirmed, he slid, he slided; everything, everything but give candid answers.

So I ask you again, our system of law is based on a concept that a man must be acquitted unless you are convinced of guilt beyond a reasonable doubt. This isn't a light thing. This is not a light thing, convicting a man.

Our laws have made it hard. We don't want it to be something easy. We want the proof to be beyond a reasonable doubt. We want proof beyond a reasonable doubt.

Do you think it's here in this case? Are you going to let all that dope fool you?

I don't want to say it. I sure hope not. I hope you have more consideration for our system of criminal justice than that.

We have the finest system in the world. I ask you to abide by it, to go by it. Justice isn't only convicting a guilty man, justice is also acquitting a man when he hasn't been proved guilty beyond a reasonable doubt.

I urge you, I urge you, go through Raymond Rivera's testimony, if necessary, and then come to the only decision you can make based on that: that he is a liar, you can't believe him and you have got to acquit.

I thank you.

THE COURT: Thank you, Mr. Lir

Ladies and gentlemen, I think we will take a ten-minute recess now.

(The jury left the courtroom.)

THE COURT: Gentlemen, I would like to take up just two things.

Nobody has submitted any requests for an instruction with respect to alibi. Do I take it that nobody is interested in such an instruction?

Do you want the instruction?

MR. CUNNIFFE: Yes.

THE COURT: What sort of an instruction do you want?

MR. CUNNIFFE: I was more curious as to whether your Honor was going to submit an instruction. I might have been satisfied with any instruction that your Honor will submit.

THE COURT: The second matter I want to raise is, I am going to be instructing the jury with respect to certain evidence which can only be considered against particular defendants. Now, this is very limited. But I want to be sure that I do cover all of the evidence that falls into this category.

This would be evidence of postarrest statements and it would be evidence of prior or subsequent similar acts.

I don't believe there is anything else, but I did want to just draw on your recollections for every example of this so that I do cover it.

Mr. Ziegler or Mr. Moss, can I call on you first?

MR. MOSS: The one similar act that I can recall is the distribution in 1971 of small quantities of heroin by Fabian Rodriguez at a time when he was dealing with Raymond Rossy and Rodriguez' cousin, Gilberto Torres. That was on Eldridge Street, and I believe it was 1971.

I believe the gist of the testimony was that Gilberto Torres and Fabian Rodriguez were distributing bundles of heroin on Eldridge Street for Raymond Rossy.

There are two postarrest statements that I can think of. The first is, of course, the postarrest admissions of Orlando Machado. The second is the consent to search the automobile of Angelo Roche.

I can think of one more, your Honor.

In 1972 there was a distribution of a small quantity of heroin in the apartment of an individual identified by Benito Cruz as Papo, and that distribution took place to Anthony Rodriguez, the defendant.

Predating the conspiracy, that then would be a primary similar act.

THE COURT: There was also the incident at the Strauss Store. Isn't that --

MR. MOSS: That incident was within the period of the conspiracy. It was in October of 1975.

THE COURT: Does anyone else think of any others?

This covers everyone --

MR. MITCHELL: Well, there is one that is subsequent, your Honor, and I don't know how that is going to be covered. That is the one November 19, 1975, the conspiracy ending on November 6, 1975.

There is an allegation by Police Officer Rivera that in his opinion Fabian participated in a purchase of his. That's where he is alleged to have counted the money.

I don't know what theory the government has at that point on admissibility, but it was allowed in.

MR. MOSS: I should point out with no objection at the time.

Your Honor, Raphael Rivera's testimony in that regard was that upon meeting Fabian Rodriguez in November he complained about the purity of heroin that had been distributed to him on prior occasions by Gilberto Torres, and at that time he said, "We give it to you the way we get it," which clearly is, at the very least, an adoptive admission of his participation in those prior sales.

The conspiracy came to a halt for technical purposes on November 6th, because that's when the California connection was disrupted.

It may well be that heroin that had been distributed -- I should say brought back to New York prior to November 6th was nonetheless distributed in New York following the arrest of the co-conspirators in California, and I submit that it is the government's theory that that's just what happened, and on November 19th Fabian Rodriguez was distributing perhaps the last quantity of brown rock heroin, but that that distribution was the last distribution in a series of distributions, most of which had taken place during the technical period of this conspiracy.

If your Honor would wish to charge that as a subsequent similar act as to Fabian Rodriguez the government really has no major objection to that.

But it is our position that that particular distribution is very much a part of this conspiracy.

THE COURT: I take it so far as Mr. Mitchell is concerned it is a matter of indifference as to whether I charge it as a substantive similar act or not.

MR. MITCHELL: Well, I am going to take care of it, your Honor, in my summation. Specifically, I have to eliminate that particular alleged sale, whether your Honor considers it admissible as a similar transaction subsequent to the end of the indictment or whether your Honor will throw it to the jury as a question of fact whether it was a conspiracy with the balance.

But the conspiracy having ended, I can't see it. It could only be admitted, your Honor, on the theory of a subsequent similar act, and I ask your Honor to so charge, because you are going to run into a factual situation with Cruz having been arrested before the end of October.

There is no evidence whatsoever that there is any brown heroin around that came from California as part of the conspiracy, and the fact that the officer makes a purchase of brown heroin -- and I will go into that with the chemist's report if I have to -- if there is an attempt to connect it to the original conspiracy -- as a matter of fact, I see it as a separate conspiracy. I was going to so argue to the jury.

Mr. Moss is asking the jury to make a big jump in the dark. He is asking them to draw an inference which they possibly could do, but, I mean, at the same time I could ask them to infer to the contrary and it would be just as fair.

THE COURT: It does seem to me that the comments that were made, the complaint about quality and the explanation of lack of control over the quality all relate fairly directly to the conspiracy that is alleged. At least it can be inferred that they did.

MR. MITCHELL: No. It relates to a couple of sales after August of 1975. But there is no testimony of any sale to this Gilberto Torres after January of 1975. Nobody said they sold to him. Cruz drops him completely.

THE COURT: All right. I think I will probably deal with thatthen as a separate similar act.

MR. ZIEGLER: Your Honor, there is one last matter perhaps we can take care of briefly, and that is Mr. Broderick has submitted three versions of a request to charge on the issue of voluntariness.

The government objects to each of the three.

The thrust of each of the proposed charges is that if the jury should find that Orlando Machado's statements to Assistant U. S. Attorney Moss were involuntary, then they must disregard it.

That is the statement of the Massachusetts rule on confessions and that is not the rule applicable in the federal courts.

The proper charge is the one that the government has submitted as request to charge No. 11.

In support of my argument I cite United States against Barry, 518 F. 2d 342, which makes clear that under 18 U. S. Code 3501, the only question for the jury is in light of all the circumstances that have been brought out in the evidence surrounding the making of the statement, that they may give such weight to the statement as they wish, that it is improper to tell them to disregard it if they find it involuntary.

THE COURT: They can decide to disregard it. It is their decision.

MR. ZIEGLER: In their discretion.

THE COURT: Yes, sir.

I think that is the tone my charge will take, Mr. Broderick.

MR. BRODERICK: Your Honor, of course, if you will review request No. 12, which I don't know if you even had a chance to read because I gave it to you so late, but there, of course, there are three cases cited, Clewis against Texas and Coyote against the United States.

MR. ZIEGLER: Your Honor, each of those cases is dated in 1967, which precedes the enactment of the omnibus Crime Control Act of 1968, which codified the orthodox rule in regard to confessions as the rule applicable in the federal courts as opposed to the Massachusetts rule.

THE COURT: On your submission No. 13, with respect to accomplice testimony, I will charge that accomplice testimony must be regarded with -- must be closely scrutinized.

I will not charge that you cannot convict a defendant on the unsupported testimony of an alleged accomplice because I don't believe that's the law.

With respect to any testimony, you cannot convict unless you believe the testimony beyond a reasonable doubt. You have to believe that the charges are proven beyond a reasonable doubt or you can't in any event convict.

But I will not give an instruction which starts off by saying that you cannot convict on the unsupported testimony of an accomplice because that is just not my understanding of the law.

We will take a three-minute recess.

T3 pm

(Jury in box.)

THE COURT: We will now hear from Mr. Mitchell on behalf of Mr. Fabian Rodriguez.

MR. MITCHELL: If your Honor please, members of the prosecution staff, members of the defense bar, madam forelady, members of the jury: I represent Fabian Rodriguez --

Will you please stand up?

(Defendant Fabian Rodriguez stands)

And that is the only person that I represent. I am solely concerned with his predicament in being here.

Now, it would be very easy for me to simply say that the entire case against Mr. Rodriguez, Fabian Rodriguez -- because there are two Rodriguezes here, and don't confuse that -- that the entire case against Fabian Rodriguez is Benito Cruz, and I could go on and say if you believe Benito Cruz, convict him, and if you don't believe Benito Cruz you must acquit him. I could do that. But, as the ads on television -- I think it is Isaac Geller, or one of the other kosher frankfurter ads say, I would have to answer to a higher authority. So let me get into the case. First of all, I want to clear one thing out of the way. The witness Rivera has been beaten and beaten so that almost nothing is left of him.

But, in addition, I have a stipulation which was read to this jury in regard to Rivera. It has nothing to do with my client, Fabian Rodriguez, but it is an important stipulation. The stipulation was that Rivera failed to identify a picture of Gilberto Torres which was in a book of photographs. So that you know, and I want you to know, that there existed a book with Gilberto Torres' picture, and it became very important in relation to the other defendants.

Now, prior to the conspiracy which started in October, 1973, and ended on November 6, 1975, at the time of the arrests in California, my client is charged by one, Rossy, who testified here and who has also been decimated by other counsel, Rossy said that some time in 1970 and 1971 Fabian was involved in a narcotics transaction with him. That is what is known in law as a prior similar act. His Honor will charge you on the law of prior similar acts, as to when and only when and only how you can consider it. And in the same breath, after the conspiracy ended on November 19, 1975, the government charges another similar act, namely, where Police Officer Rivera testified that my client was involved in counting some money in a narcotics transaction.

Now, I will clear the air on the picture. Rossy testified about a Gilberto, but he never identified his picture. The police officer testified about a Gilberto, but he never testified about identifying the picture. So we don't know and you can't speculate, you must not speculate. We do not know whether Rossy, Cruz and the police officer are talking about the same Gilberto. I can show you that there must have been a different Gilberto, because in the testimony of one of the witnesses, it was said, "The Gilberto that I dealt with had a partner by the name of Angelo." Fabian Rodriguez has never been called Angelo.

Now, as I recall the testimony, the testimony of Cruz started in a peculiar way. I want you to recall it. It is very short and it is to the point. He got up on that witness stand and he testified about alleged sales in January, December or January, 1974, 1975, to a Gilberto Torres whose last name he didn't know, and to my client. When I say "my client," it was not my client. He said to somebody by the name of Fabian. You say I am making the same mistake. I don't want the jury to make any mistake. And then he was asked to pick out this Fabian. It was late in the afternoon. He looked around from his seat. He said, "He is not in the courtroom." There is no dispute he was in the courtroom. And thereafter we had a bench conference.

You ladies and gentlemen were excused for the afternoon. He returned the next morning, got up on the witness stand and he was asked to pick out the Fabian he dealt with. He said, "He is not in the courtroom." The District Attorney said, "Stand up and look around." He stood up and he looked around and he said, "He is not in the courtroom." I noticed at that time that there were some smiles on the faces of the jury. Why I don't know. Each person has his own reason. Then the District Attorney asked for a bench conference and at that point, I observed, everybody laughed. Subsequent to that and for the first time he made an identification.

Now, how good is his identification? I mean, this is not baseball where you get three strikes, you miss two, possibly you hit on the third. This is not one of those three card monte or shell games where a person points to the first shell, nothing under it, points to the second shell, nothing under it, it has to be the third one. That is not this kind of a situation. He is not asked to pick one man out of nine. You recall how many of these defendants either he identified prior thereto or whose identification was conceded? Also recollect how many of them he knew, whether he identified them or not, for the purpose of this trial. And then I want you to consider and consider carefully, is there a doubt based on reason? Is there a doubt in your mind as to the identification? If you have a reasonable doubt as to the identification, when his Honor charges youon the law he will tell you that a reasonable doubt can arise from the evidence or from the lack of evidence. And if you have a reasonable doubt as to the identification, you must find there was no identification. Therefore, he is not talking about Fabian.

The District Attorney is going to attempt to say, "Well, he is tied in with this Gilbert or Gilberto, but what proof do we have that this Gilbert or Gilberto that the other witnesses have talked about is the same individual? Rivera could not pick him out of a picture book. Whether the others did or did not is immaterial, because there is no testimony here that they did pick him out, that the Gilbert or Gilberto they are talking about is the same individual. That also applies to that list where several names are listed. There are references to addresses, and Cruz says Gil meant Gilberto. Which Gilberto? What Gilberto? Consider that carefully. And I will come to certain other factors in regard to Cruz. Mr. Broderick has taken care of some of them, as I believe Mr. Krieger and some of the others. Can you believe him or not?

First of all, I believe his Honor will find as a matter of law that Cruz is an accomplice of Gallardo, Rivera and Rossy. And as an accomplice his Honor will charge you that there is a certain rule which applies to accomplice testimony which differentiates it from that of an ordinary witness. I want you to follow that. It is very simple. And I won't be much longer.

What about Cruz and his testimony? I contend that it does not apply to my client. Here is a man whose testimony before a grand jury was taken in July of 1976. Cruz had testified before four grand juries, and there were earlier ones. There was one as early as December of 1975. It is in the record. He is describing a sale at 23rd Street in McDonald's, a sale at 17th Street, a sale at 14th Street, a sale in Brooklyn, all with Gilberto. But at no time does he mention Fabian. And then, of course, we have his classic answer, "I wasn't asked." It's possible he wasn't asked, because it's possible that up to that time the District Attorney who was questioning him had never heard of Fabian.

Now, as I said before, a reasonable doubt can arise from the evidence or the lack of evidence. His Honor will charge you that the government has the burden of proof. They have to prove beyond a reasonable doubt that my client, Fabian, is guilty. We don't have to do anything. You have heard this from a half dozen lawyers and maybe even after me. Mr. Landau may tell you the same thing. But I say to you there are things that are missing here in this case. One of them is as positive as Cruz seems to be about January of 1975 at these various places, he does not remember when he ever told anybody about Fabian for the first time. He was debriefed by agents. All the government would have to do is to put an agent on the stand and say, "According to your records, you prepared and listened to him, when for the first time did he mention Fabian?" It was not done. There was no testimony in this case as to the arrest of Fabian. The indictment was handed down in March of 1977. As far as we know, we can't speculate, Fabian was not arrested on this case until the indictment came down. Was Fabian working for the Post Office during that period of time? It was brought out from the government's witnesses that he was a postal employee. If he was not working at the time the indictment came down they would have had postal records in here. I don't have to prove he was working there. He started to work there, and you have to assume that he continued to work there.

Now, another thing about Cruz. Cruz testified before several grand juries and at several trials, according to his testimony, that the first time he saw Fabian was in

February of 1975. How did he come to change it to January? Who told him he was wrong? When did somebody tell him he was wrong? And how did that somebody know? It's a big gap. It is enough to raise a reasonable doubt.

Just bear with me and I will be through in a moment, so you won't have to be bored any more this afternoon by me. It narrows down to a very simple thing, and without attempting to instruct you on the law, I might suggest to you, and possibly his Honor will tell you, that that is the proper way to do it. I don't know. But I would suggest to you that you first determine whether you believe Cruz's version of it, either January or February or December, it doesn't matter. Do you believe that version or do you disbelieve it? If you disbelieve that version, you don't even have to consider the prior similar act or the subsequent one. If you believe the testimony, then, of course, under the instructions by his Honor they can be considered. So it narrows down to a simple issue: Do you believe Cruz as against Fabian or do you not believe h[illegible]

Now, you, ladies and gentlemen, are going into that jury room. It has been a long trial. You will have varying versions of what each defendant did or didn't do. One of the factors that may possibly come up is a question of how much to believe a person and how much not to believe a person. Other attorneys have asked you to use your common sense. I ask you to do the same. You don't have to know the law, you don't have to know anything further: this is not "Alice in the Looking Glass" or through the looking glass where the queen says, "I am the judge; I am the jury; off with her head." It is not that kind of situation. You have to determine the guilt or innocence of Fabian. Some of you will have views one way, some of you will have views the other way. His Honor will possibly tell you you must attempt to reconcile your views, now, what I tell you next I say in all sincerity. You may be in the majority, you may be in the minority, but if you believe your view on Fabian, and with an approaching weekend, which is important to some people -- I don't know -- you may have a verdict very rapidly -- it may take you longer-- but what I say to you, ladies and gentlemen, is what I have said to every jury as long as I have ever summed up to a jury: don't sell your right to your verdict simply because the hour grows late and you want to get home to your loved ones. That is no excuse. You took an oath as jurors. I expect you to uphold that oath.

Now, the defendant is charged with three counts, a conspiracy count and two substantive counts, alleged purchases in December or January, and then again in January of 1975. You have to determine and you have to consider each one of those counts separately. I say to you, ladies and gentlemen, if you disbelieve Cruz, then there is no evidence connecting this defendant Fabian with the conspiracy or with either of the two alleged purchases.

The list that Cruz identified as being in his handwriting, his record, does not mean a thing. Fabian's name isn't on it.

Another thing, if you believe that Cruz lied in his testimony here, or to be nicer about [illegible] you disbelieve him here, then you may as well disbelieve [illegible] as to the others. I say to you, ladies and gentlemen, go out into that jury room, consider my defendant as an individual separate and apart from the others, and bring in your verdict, whatever it may be, after seriously considering the evidence.

We are here, ladies and gentlemen, to search for the truth. This is not a game, this is not a matter of shifting burdens of proof. The government has that burden and it carries it right into the jury room, until you are convinced beyond a reasonable doubt of the defendant's guilt, or until you are convinced beyond a reasonable doubt of the innocence of my client Fabian.

Thank you for your attention during the trial and for your attention during my summation. It was not necessary for me to weigh papers or tear anything. Thank you.

THE COURT: Mr. Landau.

MR. LANDAU: By leave of your Honor, Mr. Zayas, ladies and gentlemen of the jury: It has been a long six weeks. When we look back at it, I think most of the weeks in between have sort of faded into a mist and probably are to some extent forgotten. I guess that is in the nature of reality. I mean, this is wood and this is paper, and the books that we see and the transcripts that we see exist. But like a toothache that goes away, we tend to forget things, and that is one of the problems that we have now. We are having summations. That is when we as attorneys attempt to remind you of what occurred. I think the longest days have been the last few, the days of summation. I know that many times during yesterday, during today, I am sure that most of you have felt tired, possibly bored, possibly lounging that whoever was talking would get done a little quicker. I am the last defense attorney to sum up, and after us, as you know, Mr. Moss will get up and give his rebuttal summation. After I sit down, no defense attorney will be able to get up and say anything. If Mr. Moss gets up and in his rebuttal summation in some way presents something to you that is possibly not directly from the transcript and not completely accurate, I can't jump up and say "That is an error." Or if it is something that raises a question in your minds, I can't get up afterwards and respond to that. I have to rely upon each one of you to remember what occurred. And when you hear Mr. Moss say something, think perhaps of what I or one of the other defense attorneys might present to you to answer what he says. Six long weeks and our cups are overflowing. It is very difficult to pour

r2

something else into a cup that is full already. And that is the reality that I am faced with. Perhaps we can all just take a moment and relax, let ourselves calm down a bit, let that boredom and tiredness that is within us now just sort of go out into the air, let it leave us for a few minutes. We know we are capable of great strengths, we know that the tiredness that we might feel one moment can leave us if a situation comes up that takes our attention away from our tiredness. Let us create that situation now, because we do have that situation. It is the end of six weeks, close to the end of this trial for all of you people. Probably we will never meet again; probably you will never see or hear of Domingo Zayas again, except when people ask you about this trial or when you remember it yourself.

You know the importance of this trial to Domingo Zayas. He sat here as you did. These are his final moments. Please don't deny him this opportunity by letting whatever thoughts of tiredness in your mind overpower your ability to listen to me. I will try not to repeat a lot of the things that we have heard before. We know that the law gives each one of us a presumption of innocence. That is very important. That goes along with what the law says about the government's burden. The government has the burden to prove beyond any reasonable doubt a man's guilt. Without that where would we be? We would be facing pograms, we would be facing all sorts of things that history has seen. We don't have this here. We have ironclad principles that have existed as we have existed, because they are here. The only way the government can take that presumption of innocence away is by proving beyond a reasonable doubt, beyond any reasonable doubt, that a defendant is guilty. We hear words "defendant," "person." It is so easy to fall into a concept. Domingo Zayas is a defendant here; he is a person. That is why the government has that burden, because that presumption of innocence is so sacred that it can only be taken away if the government has met this burden. And you are the people who have to decide whether the government has met it or not. Each of you has to decide whether the government has met its burden. And it is my belief that the government has not met its burden.

Now, what was the government's contention with respect to Domingo Zayas. When I opened up at the beginning of the case I asked you, every other lawyer asked you, to pay attention, to examine like a scientist the testimony and the evidence that comes in, to watch the witnesses and watch the way they react and behave. I don't know how many of you have seen the motion picture, The Exorcist. It had to do with a child that was taken over, bewitched, and they called in someone, a priest, Father Karis, who had an assistant and who was going to help him exorcise this beast, this devil. And before they went into her room, the older priest said to Brother Marin, "You must be very careful and you must be very strong. The devil is at work here. The devil is deceitful. He takes half and quarter truths and blows them up and puts them so that you think he is telling the truth, because he can seize upon little bits that seem to be true. Well, there are devils at work here, too, and you must be very careful of those little bits of truth that were spun around and spun around and spun around until the government believed that it had presented a case against Domingo Zayas.

Ryamond Rossy. Raymond Rossy was the man who had hidden in his father's backyard in Puerto Rico $116,000, and then it turned out, I believe, to be $140,000.

This is the man who never told anybody about it until it was brought out on cross examination at another trial.

That's the man we are talking about, Nilsa Rossy's husband.

When we look and hear and examine anybody as to what they said it is a most natural thing to assume that people tell the truth. I mean, our existences are built upon this. If we talk to a neighbor, we talk to a friend, we talk to a stranger some place, we assume that they tell the truth. Why should they lie?

Well, I think you are getting an idea of why some people, like the Rossys, the Riveras, lie. You have heard it before and you remember it, I'm sure.

Raymond Rossy stated that he had met Domingo Zayas -- not by that name; he knew him as Luisito; didn't know him by any other name, just Luisito.

He also stated that he knew who this man was. He was Martha Machado's brother. Keep hold of that on the side.

Now, the testimony that came out from Raymond Rossy with reference to Domingo Zayas was that sometime in February he had a transaction with, as he called him, Luisito. He said he had seen Martha and my client together and that he had mentioned that he wanted some heroin, and they went into a jewelry store and then later on he met my client at Katz' delicatessen and they exchanged paper bags.

Well, what can you say to that? He wasn't completely sure when; it was about February.

And you heard from other lawyers about the problems that we have when someone says, "Oh, about February, three years ago." Big problem; it really is.

It's not flippantly put out to you. Where were you two years ago, three years ago, at a particular month? That's really something that we have got to consider, so you can't expect people to come running forward and being able to prove, "Here's where I was."

We look at a little bit of the testimony, and he said that Domingo Zayas said, "You come into the jewelry store."

Okay.

Later on in the testimony he said that Martha told him to come into the jewelry store.

A small point, but if his mind is able to go back to that time period and to be able to tell you people that something occurred, then his mind should also be able to remember how it happened. And apparently he wasn't too sure.

Now, is that all there was?

Well, Jim Moss said to him: "Was there ever another occasion when you personally transacted narcotics with Luisito?"

"No, sir."

That's it. That's Rossy.

Who is Rossy? Let's examine credibility, believability.

We have already gotten an idea, and a very strong idea, as to what the problem is with reference to these kinds of people lying. When I say these kinds of people, I mean Rossy, I mean Rivera.

We know how they arrange their deals with the prosecutors. We understand why the prosecutor would talk with them and so forth.

We also understand what a man like Rossy would have to gain. Fifteen years of his life, perhaps, out of jail.

I remember the '60s, when college students and some law students would go to great depths and great lengths to lie to their Draft Board to avoid going into the service. These were fine, upstanding people. They would lie to the government to avoid going into the service.

So can we not understand a man like Rossy, a man like Rivera, who admittedly came from the street in a dog-eat-dog kind of situation, can we not understand them lying?

And as has been pointed out before, by the time these people started cooperating a lot of those names you heard about were already arrested. They got to come up with something, they got to deal.

Why would they come up with him? Because he was related to the Machados. What do they care about him?

I am going to read you quickly a couple of lines of transcript. These are questions that were posed by various defense attorneys to Rossy as he sat there under oath.

"You lied to your parole officer on a number of occasions, didn't you?"

"Yes."

"Weren't you under an obligation to tell them the truth?"

"Yes."

"But you lied to him?"

"Yes."

"When you appeared before a grand jury in this court did you not swear to an oath to tell the truth so help you God?"

"Yes, sir."

"And did you lie?"

"Yes."

"You lied to those grand jurors, is that correct?"

"Yes, sir."

"And the assistant United States attorney asked you questions in front of the grand jury, is that correct?"

"Yes."

"And you still lied?"

"Yes."

Rossy says, "I still lied."

"Even though you were under oath?"

"Yes."

"You have lied on other occasions, have you not? Is that correct?"

"Yes, sir."

"You admit to those lies now?"

"Yes."

"But you didn't admit to them when you were confronted wiht them, did you?"

"No, sir."

That means that attorneys said to him, "You are underoath, are you lying?" and he said, "Oh, no, sir."

Later on, after those trials, after those grand juries were done, then it came out that he was lying, after all of that, just as after this trial.

That's the danger. That's the problem. That's what we are confronted with.

He was asked about a trial he went through in this courthouse and he raised his hand and swore to tell the truth and he said, "Yes, I did."

"So help you God?"

"Yes, sir."

"And yet you continued to lie even though you had taken that oath, correct?"

"Yes, sir."

"So you lied in front of a jury in that trial and in front of the judge and in front of the defendants that you were testifying against and in front of jurors?" like yourselves.

"Yes, sir."

"And you lied on other occasions too, correct?"

"Yes, sir."

Page 1403:

"Did the government ever bring criminal charges against you for those lies?"

"No, sir.

"You were never charged with perjury before that grand jury that you lied to, were you?"

"No, sir."

"You were never charged with perjury before the courts in the trials you lied to?"

"No, sir."

"And this is because you are cooperating with the prosecution, correct?"

"Yes, sir."

"And the information that you had given the government, given the government, included perjured information, is that correct?"

"Yes, sir."

"As a matter of fact, you lied before a grand jury on more than one occasion, is that correct?"

"Yes, sir," he said.

"When you testified before the grand juries on those trials were you aware of the importance of your testimony with reference to the defendants who were on trial or who were being accused?"

"Oh, I don't know," were the three words he answered with.

"When you testified at trials you realized the importance to the people that were on trial then, didn't you?"

Well, he thought about it, and his answer was "Yes, sir."

Then he was asked about the lawyers that say, "Are you telling the truth now?" and he admitted that they asked it.

Then the next question was, "Actually, you lied, correct?"

And Mr. Rossy said, "Yes, sir."

"If you hadn't been caught, if you hadn't been caught, you would still be on the streets dealing heroin, correct, Mr. Rossy?"

"Yes, sir."

So what is this incentive? What's creating him to violate that oath? What is making this man swear to an oath before God that he will tell the truth and then lie?

He admitted that he could have been brought up on charges by the federal government and by New York State. He admitted that he was arrested and indicted by New York State, felony charges, 15 years to life, minimum 15 years in jail.

There is the incentive. There is the incentive. That is so powerful an incentive too.

We all know about conditions in jail. We all know about the problems. We all know what it's like to be ill for maybe a couple of weeks and feel it, "Gee, I lost a couple of weeks of my life."

Fifteen years is a lot longer than a couple of weeks.

So he made a deal, he worked out an agreement, the federal government didn't prosecute him, didn't prosecute him. Of all the things he spoke about, they didn't prosecute him. And in the state, part of his deal was that he would be permitted to plead guilty to an A-3 felony, a year to life.

When they say life here they mean lifetime probation.

One year, a year and a half, instead of 15 or 30 or more. Some deal.

Now Rossy has to come up with something to give them, and he did. He threw them Domingo Zayas.

Questions about the million dollars he made, about Internal Revenue Service and things like those, they sound very irrelevant. They don't sound like very much. But all of this was in his head. All of this must have been part of that agreement that he had with the government, if not in writing, an understood agreement, because the Internal Revenue Service never did anything about him or Rivera; never did anything.

What did the government do? What did they do about the lies that he has admitted to? What did they do about the grand juries that he lied before, about the trials he lied before?

Do you know what they did? They let him come before you people. They let him testify again.

Mr. Rivera, you have heard a day and a half about Rivera. I won't trouble you very much more with him.

The same incentive, the same deal, the same cooperation, the same freedom. They both bought their freedom. Rivera bought his freedom. So how did he pay for it?

He spoke about a number of people. I can't vouch for anybody. Nobody can vouch for anybody when it really comes down to it. But we can examine people and motives and their incentive and what they have to do to get themselves a deal like this.

So what did Rivera do?

He said that he received some drugs from my client on two occasions. He also said that he had been told that my client went to California on two occasions to pick up drugs. The infamous California trips.

Well, you know, I'm not one to throw mud or anything like that, but I think it is very important that we understand something.

Government agents are trained and go through extensive training on investigations and how to make cases and how to prepare cases and how to prepare cases where there will be as few loopholes and so forth as possible.

Why didn't the government go to the Garvey Hotel? We have heard so much about people going to the Garvey, about Gallardo, about his henchmen, about -- who? Rivera, about other people. Why didn't the government go there and bring back records? They were told the names of people by their own witnesses.

They were told, "I was there, I probably used this name."

Why didn't they do that? Why wasn't there an agent like this agent over here to get up on the stand and say, "We went there, here are the hotel records." Why didn't they go there?

Because possibly, possibly it would have weakened, diluted or proved in many aspects that the government witnesses were lying.

No hotel records, no plane records, no testimony of pretense by agents to secure them.

But they let a man come up here and say, "Well, he told me this and I got drugs from him two times and I think it was about February."

There is that problem we have. There is the problem we have.

We got the normal problem of a conspiracy case where you are listening to testimony and seeing all sorts of tangible pieces of evidence against one man or two men or a couple of men, against people that aren't here, and then we can't even get a fairly precise date.

Rivera also was dealing. What was he dealing for?

I mean he, when pushed, admitted that he could have gone to jail for a long time.

But now let's look -- let's try to get behind what's in this man's mind.

He is now being put to his final test, which is testifying. He gives lots of names and now he has to come up there and be confronted by cross examination, and he knows he made a deal and he knows that he made a very good deal, and he knows that he is going to be questioned about this deal because this is what -- I mean, there aren't that many things that we can bring out to show that this man has the incentive to lie.

But what were his answers?

"Did you know that you could have gone to jail on that federal charge down in Puerto Rico," which had nothing to do with any of his dealings up here, "for 15 years?"

He didn't know. His lawyer never told him.

"Did your attorney ever advise you on each of those counts you could get up to 15 years?"

"No, sir, he didn't tell me nothing about it."

I don't have to tell you that a lawyer representing someone will discuss all aspects of a man's case and what his plea means. But right here in front of you he said "No, sir."

Why would he say that if he didn't have a bit of a guilty conscience in some way and didn't want to confront it directly and head on?

"Yes, he told me and I knew it, okay."

But he went around it and around it and around it to the point where where we had to get a transcriptto show him that he was told that.

And he was never indicted for any of the narcotics dealings that he talked about up here, and Rossy was never indicted for any of those narcotics deals.

That's some deal. Forget about the deal

that was made with the authorities down there or here, "Well, your Honor, he is cooperating with us," says the United States attorney, so that the judge will give a lower sentence, which is what happened. That is one deal.

The second deal was that he wasn't even brought to justice, indicted or charged with any of those dealings that he was talking about, that either of them -- they picked up their marbles and they just did a lot of talking, and since they didn't have a lot of people left to talk about they made up some. And it's pretty logical in their mind that they would turn to someone who, as you now know, was related to Martha Machado, who was having a relationship with Gallardo.

Pages and pages of him skipping rope around the fact that he knew that he could have gotten away -- he could have gone to jail for all of those years.

Had to go all the way to Puerto Rico to have them prepare a transcript and bring it up here to get him to finally admit that he knows what he could have done.

If you are whipping up a bunch of eggs fo an omelet and you open one up and put it in and start mixing a little bit and then you realize that it is rotten, you can try to take some of the rotten egg out, but can you be sure that the rest of the batch is not contaminated?

This is what we have here. You have heard it. Every one of these lawyers attempted to show you what that man Rossy and that man Rivera were made of.

That was it as far as my client was concerned, Rossy and Rivera.

No telephone books with his name in it, no hotel receipts, no airplane receipts, no drugs.

Then a man named Benito Cruz came up. Never said anything about Zayas, and I could have sat back and not cross examined him.

Cruz was the man who introduced Gallardo to Vasquez and that's how Gallardo got involved with Los Angeles, so that's the importance of Cruz as far as him being there and part of it.

We know that he even for a period of time ran the business. Yet he stated that the first time that he met Zayas was Christmas week, 1974. He had come down to Puerto Rico with someone who disappeared, he told us, and then he met Gallardo and Martha and some other people and he went to a Christmas party with them.

Zayas wasn't even at that Christmas party.

Someone else spoke about another party I think Rivera, that he threw. He went through a whole list of names. Zayas wasn't at that party.

Cruz, you can bet, if he had had any narcotics dealing with my client, Domingo Zayas, he would have told about it.

If he had heard from any of the 29 or 30-some-odd co-conspirators about my client dealing narcotics or being involved in what those people were doing he could have spoken about it and testified about it. "Nada," nothing, no mention.

And he was around through October 15th of 1975 when he was arrested.

He said he knew the Machado brothers, Wilfredo, Orlando, Ferde, Paco and so forth.

The Machado brothers have gotten a lot of play during this trial. We have a Machado brother here, Orlando. You have heard how there were misidentifications and so forth.

Let's not make this a -- vendetta isn't the right word, but let's not make this a family kind of thing where if you heard testimony about Martha Machado and her consort, that because Domingo Zayas is a half brother, that he, of course, must be guilty.

I asked Cruz some questions, not because he said anything on direct, because there was something that was important to bring out. The first was about the party and the second was a trip that he and Gallardo made after the party, Christmas holiday weekend, and they flew a half hour from where Gallardo and all those other people were to a town where Domingo Zayas was. That's when he first met him.

What did they do? They discovered that he didn't have a telephone in the house that he was staying at, so Domingo Zayas drove them to the nearest town where there was a telephone.

"Who was being called, do you remember?"

"A customer that I had," Cruz said. "We had sold heroin to him in New York," him and Gallardo apparently is the "we."

"What was his name?"

"Robinson."

"You made the phone call?"

"I think so."

"And did you not, after you made the phone call, go back to Domingo Zayas' house, the house that he was at? Correct?"

"I think so."

"And then from there did you not proceed to Robinson's house?"

"Yes."

He and Gallardo went to Robinson's house to continue some of their drug transactions. They left Domingo Zayas in the house where he resided. They didn't bring him with them. Why? He wasn't a member of that whole thing so they wouldn't bring him into it, or if they offered to bring him, offered to include him, he refused.

Why else would they leave him there and then go back afterwards to his house and then leave?

We are getting a little tired again, a little restless. It's almost over.

You know that each individual man who is indicted and on trial here is an individual being. Even though they are brought to trial together, you must treat each of them as an individual.

You know that Domingo Zayas, by order of this court and the law, is presumed by each one of you now to be innocent and if you don't believe that presumption, well, you are violating your oath, as Rivera and Rossy violated theirs.

You also know that the government has a burden, a job to do -- the law says this -- to prove Domingo Zayas guilty beyond a reasonable doubt; that Domingo Zayas has no burden, that his being here, as I told you here in the beginning, is his statement of innocence, and that continues with him .

The government put forth the best that it had, and Domingo Zayas, without any burden, met them. He got up and he took the stand. He knew that Mr. Moss would cross examine him. He had seen Mr. Moss over many, many, many weeks. There is no doubt about the fact that he is a fine attorney, knows how to ask lots of questions. He put himself before those questions.

He told you a few things about himself; that he had just turned 33 the week before he testified.

He also knew that he would have to tell you that he had two convictions. One he couldn't remember, he honestly told you he couldn't remember what it was about, except it was a narcotics conviction, and he said that it was not heroin, he would have remembered that, he said. And the second was marijuana.

Now, when he took the stand he knew he was going to tell you that. And he also had faith in you in that are you going to convict someone because of two convictions that occurred years back, because of the marijuana conviction?

That has nothing to do with this case.

And I asked him a few questions. I didn't ask him a lot of questions. He took the opportunity to tell you that he had been here throughout this trial. You knew that, except for what he said, the few times that he had to go to the hospital.

But he told you that he had sat here when Rossy said what I just told you he said, when Rivera said what I just told you what he said, and I said to him, "Have you ever been to California?"

And he said, "No, sir. The farthest I've gone is Puerto Rico."

Now, a couple of words, but we are becoming scientists in examining words. He didn't just say "No, sir,": what popped into his mind was, "The farthest I've gone was Puerto Rico."

Indications like that lend to credibility, lend to believability: "The farthest I have gone is to Puerto Rico." California is so far away if you haven't been there.

"Have you ever had any dealings with selling heroin like those people said you did?"

"No, sir."

"Is whatever was said by those two men untrue?"

"Yes, sir."

His day in court.

"I have no further questions, your Honor."

And Mr. Moss had his opportunity to take him over the coals, to ask him questions, to twist things, to try to find out whether he was telling the truth, to bring out all the testimony that they had said, to cross examine as myself and all these other lawyers did to those prosecution witnesses.

And what did he talk about?

"Are you known as Luisito?"

"Yes. My family calls me Luisito."

"Your family includes Martha Machado, does it not?"

"Yes,sir. She is my sister."

"And Orlando Machado?"

"Yes, sir."

"And Wilfredo Machado and Felix Machado?"

"Yes, sir."

Then he asked him, "Well, aren't you known as Luisito by William Cortes-Rios?"

And Domingo Zayas says, "No, I don't know."

"Or [illegible] F[illegible]marejo?"

"No."

"Or by Carlos Gallardo? Do you know Carlos Gallardo?" is what the question was. And he said, "Yes."

That is Fernando Gallardo's brother, and Fernando and his stepsister were living together.

He denied he knew Raymond Rossy, he denied he had ever met Rossy or Cuba.

He was asked a few questions with reference to the convictions that he told about, which he owned up to and said yes, and that was it. Less than two pages of cross examination, a small number of questions. That's all that the prosecution did on cross examination with reference to Domingo Zayas. That's all.

And then I got up and I asked him, "What's your relationship to the Machados?"

And he said, "We have a common mother."

Then he said, with reference to my asking him about the name Morales, because that was a name that he had used, and we have heard about aliases and things like that, which sounds terrible, and he says, "Well, all I remember, when I was a little kid my real mother gave me away, so I grew up with the Morales family, Enrica Morales and Martinez. They brought me up and I went to school with that name. That is the only name I knew until I got out of the Army, when I found out who my real mothhr was."

His real mother was also the mother of Martha Machado and the other Machados. That's the family tie. And yet the government and those witnesses are taking that and spinning the web around it to create what they tried to create.

The government has that obligation to prove Domingo Zayas guilty beyond a doubt. They tried to do that, they tried to prove that to you by two witnesses, Rossy and Rivera.

You heard about those two people. You heard about the deals that they made. You heard about what they got for their cooperation. You have heard about how they bought their freedom.

For them it's over now.

He made no deal with the government. He wasn't given anything to testify. For Domingo Zayas it's not over and it won't be over for a little longer. He got no promises from the government if he testified.

Take a couple of breaths, a couple of minutes and I'm done.

What is going to happen in the future to Rossy and Rivera?

This universe is run by the laws of cause and effect. We have all heard about it. If you do something good in some way it comes back to you; if you do something bad it comes back too, retribution, karma.

Rivera and Rossy have to live with what they have done with the lives they have made with their karma. Let them walk through the hells that they have created for themselves. For them, as far as this is concerned, it's over and the rest for them will be with them throughout the rest of their lives.

We also, every one of us, live under that same universal law.

If I did not spend time preparing this

case and talking with Domingo and so forth that would come back to me. It would be on my conscience.

(Continued on next page.)

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You people also have your duty. You have been told it. You know it, and your job will be over after you have done your deliberating one way or another, your verdict, each one of you. You are 12 people on the jury, just like there are nine defendants here. But you are each individuals. You must remember that, individuals, instead of one person sitting in judgment, because each one of you has your own life experiences, your own abilities, your own innate psychic ability to hear things, to feel them, to understand them. Believe in yourselves and believe in your convictions.

Judge Broderick is going to charge you and he is going to tell you about the burden that is on the government that you have heard so many times. He is going to tell you that the defendant has had to do something; he is going to tell you that the government must prove its case against Domingo Zayas to each one of you beyond a reasonable doubt. And if the government has not been able to do that, all of you or those of you who believe that the government has failed in its burden must by law state to the government that in your belief it has failed in its burden to prove Domingo Zayas guilty beyond a reasonable doubt. And as for Domingo Zayas, as the Judge will tell you, nobody has any need to prove his innocence.

But Domingo Zayas got up, spoke with you, and as best as man who is charged with a crime like this can do, he proved his innocence. And all you are being asked to do with reference to Domingo Zayas is to say that the government has failed in its burden to prove his guilt beyond a reasonable doubt. The world will not change and the government will not collapse and Mr. Moss won't be fired. But your conscience and your feelings will be free. I thank you very much. I mean that.

THE COURT: Ladies and gentlemen, we will take a ten-minute recess.

(Jury excused.)

MR. FIGUEROA: Your Honor, because of the nature and potential impact of the rebuttal by the government, will your Honor make an exception to the usual rule where we have to raise our hands if we have an objection? For instance, rebuttal is restricted to the summations of counsel. Government attorneys have been known to have resummations of their case during their rebuttal summation. Can we object verbally?

THE COURT: You may raise your hands.

MR. FIGUEROA: Will your Honor cause a cessation of the rebuttal at that point? What we are dealing with here is something that is not going to be easily remedied

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if he continues along that line. If we raise our hands and he continues, there has already been made an impact on the jury. That is really the important point that I wish to stress.

THE COURT: Do you plan to stray, Mr. Moss?

MR. MOSS: No.

THE COURT: I think it will work out. Just raise your hands; no oral arguments.

MR. FIGUEROA: May I make another point, your Honor? Does your Honor have any idea or does Mr. Moss have any idea how long his rebuttal will be?

THE COURT: I was just about to ask that question. How long do you think you will be?

MR. MOSS: I would like to be a half an hour. I hope not to go over that.

THE COURT: If you go over that, Mr. Figueroa will raise his hand. We will take a 15-minute recess.

(Recess.)

THE COURT: Last week you spoke about a redacted indictment. Have you been able to agree?

MR.MOSS: I have redacted along the lines I told Mr. Figueroa in conference. I have not redacted or substitute any overt act in the indictment. I think the government has proven all of the overt acts and I think they may remain in the indictment. I have redacted out every substantive count which does not relate to a defendant on trial.

MR. LANDAU: With reference to --

MR. MOSS: I think I know what Mr. Landau is going to say. We have also redacted out the aliases of Domingo Zayas, Luis Machado. That has been redacted out of our indictment.

MR. LANDAU: Thank you.

(Jury in box.)

THE COURT: We have now completed the summation by defense counsel and we will hear rebuttal by Mr. Moss.

MR. MOSS: May it please the Court and members of the jury: I will try to be brief. It has been a long day. I want to make basically three points. First, I am going to talk about the credibility of some of the government's witnesses. I think every defense attorney spent a considerable portion of his summation attacking credibility. The second thing I would like to do is respond to certain of the arguments and defenses raised by certain defendants. I am not going to respond to every argument that was made, because the arguments have been made over the course of many, many hours, and if there is anyone in the courtroom who wants to hear me speak less than you do, it is me. I want to keep it as brief as possible. I will rely on your common sense to reject the majority of those arguments, and then, finally, at the end, I will have a few concluding remarks.

What have we heard from the defendants in their arguments. We have heard some podium pounding and some very loud voices. I have not spoken in a loud voice to you before, during my opening or my summation, and I will not yell at you during this rebuttal summation. I think the evidence in this case speaks more loudly than even Mr. Mendez about the guilt of each and every one of these defendants.

With respect to the attacks that have been leveled by the defense attorneys upon the credibility of certain witnesses called by the government, you have, by and large, simple name calling. Mr. Figuaroa referred to the government's accomplice witness as the Four Horsemen of the apocalypse. Mr. Krieger referred to them as scoundrels, brigands, evil men and liars. Referring to Benito Cruz and Raymond Rivera, Mr. Krieger called them conglomerate liars. Referring to Rivera himself, he called him "that creature."

Then Mr. Broderick got up and gave us every permutation and combination of words -- cheat, liar and con man. He called Cruz five foot ten inches of moral jelly and a facile liar.

Then Mr. Cunniffe got into the act and he called Mr. Cruz a liar and a perjurer. Mr. Stokamer called him a smalltime crook. Mr. Linn called him a liar, cheat, thief and conniver, and then called him a playboy. And then, finally, Mr. Landau a few moments ago suggested that the government's witnesses were devils.

I suppose that the defense attorneys expect to impress you with that name calling. They expect that you will take these names into consideration when you consider the evidence in this case, that your memory will be so blinded that you will acquit the defendants on the basis of the names they have called the government's witnesses.

But, by and large, all of the people who were called by the government to testify about the internal workings of this conspiracy were accomplices. They participated in a huge conspiracy to distribute narcotics. None of them, none of the government witnesses can claim greater virtue in that regard. But they are not here because they are friends or allies of the government; they are here because each and every one of them dealt with these defendants on trial and the co-conspirators of these defendants. And it was these defendants who dealt with them in every case.

If you think about the nature of the conspiracy, a conspiracy will survive because it has the atmosphere of secrecy. People insulate themselves and deal with relatively few people, people whom they can trust, people, perhaps, who are smalltime crooks, people who are liars and perjurers. That is the way a conspiracy operates; that is the way it survives.

It comes down to this, ladies and gentlemen, should these defendants escape responsibility for their crimes because they dealt in heroin with persons like themselves? Because they didn't buy heroin and sell heroin to solid citizens in the community, you can be certain of that.

Now, I want to analyze the arguments that relate to the credibility of the government's witnesses and to those factors which perhaps you should take into consideration when you assess the credibility of the government's witnesses.

A major point of every defendant in his summation was that these defendants took the stand and that they took the stand with a motive to lie, because in order to convict these innocent men it was necessary to lie --

THE COURT: Mr. Moss, when you said "defendants," you meant accomplices. You said "when these defendants took the stand," you mean when these accomplices took the stand.

MR. MOSS: That is correct. That was a mistake on my part. I was not even aware that I made that mistake.

Mr. Broderick yesterday used an analogy that at first I must confess I did not think was appropriate, but the more I think about it the more appropriate it becomes, and that was the one about the Hormel hamburgers. He asked you whether you would believe an employee of a supermarket if he told you about the quality of Hormel hamburgers and how you should buy Hormel hamburgers, implying that if an employee of the supermarket told you that you should not believe him. Would you disbelieve an employee of a supermarket who recommended a particular brand of meat? Where is the motive of the employee to lie? What does he gain by selling you one piece of meat as opposed to another piece of meat? In other words, the difference is between the motive of the employee to recommend a piece of meat and to recommend one falsely. I submit, ladies and gentlemen, that carries over to the testimony in this case. While certain of the witnesses that the government called may have had a motive to come into court and to tell you what they were doing with other people in the conspiracy, that does not automatically mean that their motive was to lie, to commit perjury. I submit to you those are two very different things. These witnesses have testified at trials before against a variety of other people, not just these defendants. What motive exists to induce them to pick out the defendants? Has any defense attorney suggested to you that these witnesses had a grudge against any of these defendants? I think all of the defense attorneys admitted or accepted the fact that the government's witnesses participated in a huge conspiracy. They bought huge quantities of heroin from people and sold huge quantities of heroin; there were other people that they dealt with. Why should the witnesses come in and point to these people? Is there any answer? What is their motive to testify against these people as opposed to others?

A motive was suggested in some of the summations, conflicting motives. First of all, one of the defense attorneys stood up and said that a certain number of people had already been arrested by the time Raymond Rivera was arrested, so he had to come up with somebody new, Tony the Mechanic. That is what Mr. Stokamer said. But later in his summation he said, "Why did he pick Tony the Mechanic? Because perhaps he already knew that the government had found heroin in Tony the Mechanic's apartment." So, on the one hand, Raymond Rivera had to come up with somebody the government didn't have, and then on the other hand he had to come up with someone the government already had. Mr. Stokamer would like to have it both ways.

Mr. Linn suggested that Raymond Rivera came up with the name of Jose Velasquez, Cowboy, because the government already had him. But, again, the argument of Mr. Stokamer was that Rivera had to come up with somebody knew. What would it profit him to come up with someone the government already had? The fact is, ladies and gentlemen, that these witnesses testified about a lot of people, some of whom the government may already have had or had knowledge about and some of them they may not. But did the witnesses themselves all testify in a consistent manner? Did they testify about the same people? They all testified about Fernando Gallardo, about trips to California, the method of operation of the conspiracy, that was all testified to in exactly the same way. Certainly, minor details are never consistent, and you would not expect that from any of the witnesses. But did they all know exactly the way this conspiracy worked? How heroin was brought back from California? Who it was purchased from in California? Who distributed it in New York? To whom it was distributed? And to those people who among them knew one another? I submit, ladies and gentlemen, in that regard all of these witnesses testified the same way, because they were all part and parcel of the same conspiracy.

One fact that has been overlooked consistently by the defense attorneys is that some of these witnesses, as to some of these witnesses, the motive that originally led them to cooperate with the government has disappeared.

There is no reason for them to come and testify at all, at least not based upon that former motive.

What was Raymond Rivera's motive to testify? Was it because of threats on his life in that Puerto Rico case? Wahtever it was, he cooperated, he pled guilty and he was sentenced, and almost a year ago he was placed on probation. He is a free man, albeit in a Witness Protection Program.

What hold is there that is forcing him to come into this court? What overbearing force of the government is compelling him to testify against innocent men, to commit perjury, a perjury that might jeopardize the freedom he received when he was sentenced to probation?

And last month Benito Cruz was released, after a year or so in jail, on parole. Why would he jeopardize his new-found freedom by committing a new crime of perjury? He's free. Why would he lie?

And I submit to you, ladies and gentlemen, the defendants have completely overlooked that fact when they discussed the credibility of Raymond Rivera and Benito Cruz and they have not answered that question.

One of the most interesting developments in this case is the fact that two defendants originally named in this indictment, who, when they were arrested, pled not guilty in this case, changed their pleas to guilty and they have come in and they have testified in this case, and they have told you -- and I am talking about Louis Rodriguez and Ricardo Garcia -- that they did deal in heroin, that they did deal with Chegui, they did deal with Raymond Rivera, with Puton, Pichi and the rest, exactly as Raymond Rivera testified.

Now, was Raymond Rivera lying about them at the same time that he was lying about all of these other people?

Obviously not. They told you he was telling you the truth.

Why is it he told the truth about them but not about these people? What is it about these people that is different?

Raymond Rivera told the truth about Louis

Rodriguez and Ricardo Garcia, and I submit that there is no reason to believe that he was any less candid with respect to any of the rest of the poeple that are named as defendants in this indictment.

I have two things to say about the quality of the testimony of the government's accomplice witnesses as that bears upon their credibility.

The first I think I have already mentioned, and that is that the witnesses to a large extent bore one another out, that they corroborated one another. Their testimony was not like a glove, and you wouldn't expect that, unless they sat around a conference together and worked their testimory out, but it was essentially the same testimony.

Furthermore, if the witnesses were out to frame innocent people, I submit to you ladies and gentlemen that their testimony could have been much better in that regard.

Not one of the government witnesses mentioned every defendant on trial. No one came in here and pointed a finger right on down here, "I know him, I know him, I know him."

They had selected, they identified those people whom they knew, whom they dealt with in heroin.

And even with respect to Benito Cruz, who knew Domingo Zayas, he never mentioned him in his direct testimony. It was Mr. Landau who had to elicit from him the fact that he had met Domingo Zayas in Puerto Rico. Cruz was not volunteering that, because Cruz admitted he had never dealt in a drug transaction with Domingo Zayas.

You may recall that it was Mr. Linn who had to pull, who had to coax out of Benito Cruz the fact that Cruz had never dealt with Cowboy but knew Cowboy.

Cruz on several occasions said, during Linn's cross examination, "I never dealt with Cowboy, I never dealt with Cowboy," at least three times.

In answer to a question that Mr. Linn put to him he had to assure Mr. Linn, "I never dealt with your client."

If Mr. Cruz were out simply to frame innocent people, why not throw Cowboy in? Why not throw Domingo Zayas in? But he did not because it was not the truth, and I submit to you that Mr. Cruz was not here to lie.

You may also consider that the government's witnesses gave testimony that was quite damning to themselves, and that's important as it bears upon their credibility.

In this regard the defendants would like to have it both ways. They ask you to believe the government's witnesses when the government's witnesses tell you that they are drug dealers, that they are criminals with a criminal record, that they have participated in a huge conspiracy to sell narcotics, but, the defense attorneys say, don't believe them when they tell you who they dealt with, when they tell you who was in that conspiracy with them. Then they are no longer believable. Only believe them when they tell you how bad they are; don't believe them when they tell you who else is acting criminally responsible.

Indeed, some of the witnesses were subjected to amazing indignities on cross examination. And I am thinking right now about Raymond Rivera, whose sex life was brought out for everyone in this court to hear.

Did that further the interests of justice? Did that focus your attention on the issues in this case? Was it easy for Raymond Rivera, when he was asked, "Did you have sex with Rose Dynes? Did you have sex with Aurora? Was William Cortes-Rios committing adultery with your wife?"

What interest of justice was served by that kind of cross examination?

But remember the way Raymond Rivera handled it. He answered the questions and he maintained his composure, because he was here to asnwer the questions truthfully and to tell you what had happened in his drug dealings.

Now, I mentioned in my opening statement -- I should say my opening summation -- I spent two hours going through the entire evidence for you and I am not going to repeat that. But if you can remember many of the things that I said, then you will remember perhaps the most important point in assessing the credibility of the government's witnesses, and that is that when an accomplice came in and told you a story of how he and others had delat in narcotics there was evidence, independent evidence, to back up that story. There was what is called corroboration. Their stories fit together.

And I use the analogy of the jigsaw puzzle simply because it is easy to understand; not because this is a puzzle or it's a game, because it is not. But there are a lot of pieces of evidence, there are a lot of stipulations, there are toll records, there are hotel records, there is the testimony of agents who have testified about undercover transactions with these defendants and others, there is evidence of searches of apartments, seizures of items from defendants and co-conspirators. All of that comes together and it fits into one cohesive pattern.

You will have an opportunity to call for the evidence when you deliberate, and do that. You will see that there is a tremendous amount of corroboration in this case. You are not being asked to convict anyone based solely upon the statement of one witness.

You have sat through a five-week trial for a good reason, so you can get a picture, a whole picture, of a very huge conspiracy, and don't reject that opportunity. Consider all of the evidence.

In this regard let me just deal with one piece of evidence which Mr. Krieger dealt with in his summation. I am talking about Government's Exhibit 6D.

You will remember that these are the handwritten notes of Benito Cruz which he gave to Fernando Gallardo in January of 1975. These handwritten notes prove several things that came out in defense summations.

Mr. Krieger said, "If you can't believe Benito Cruz on the stand, how can you believe what he would write?"

But that's a preposterous argument. These were written in the course of a conspiracy. They were written to another member of the conspiracy. They are not affected by any of the arguments of defense counsel that Benito Cruz, since the time of his arrest, has a motive to lie. He had no motive when he wrote this.

And the second point that was brought up by Mr. Landau, did Benito Cruz testify in a former trial that he dealt in -- -- I'm sorry; it was Mr. Mitchell who brought this up -- did Cruz testify that it was February, '75 that he dealt with Fabian and Gilbert and not January?

I submit it could not have been February because this exhibit and these documents were seized on January 30, 1975. They were already in the government's hands by the time February, 1975 ever began. So it is clear when Cruz told you that he recalls dealing in January of 1975, clearly it must be the case.

Now, I want to review summation by symmation points raised by certain of the defendants.

Anthony Rodriguez, represented by Mr. Figueroa, presented his first defense, and his defense was essentially a defense of addiction. Because Anthony Rodriguez tried to detoxify himself at the end of August it proves -- that is, August of 1975 -- it proves to you that he was incapable of committing a crime several weeks earlier when he distributed a quarter kilogram of heroin to Raymond Rossy in his apartment.

There are at least two distinct flaws in this argument.

The first is that there is no evidence whatsoever that Anthony Rodriguez was under the influence of any drug, either heroin or coke, at the time he delivered that heroin to Raymond Rossy. Indeed, if you remember the testimony of Raymond Rossy it suggests that he was not under the influence of a drug. There is no evidence whatsoever that Anthony Rodriguez was drowsy or sleepy, was nodding off, was incorrigible or exhibited any of the other symptoms that his brother testified he had whenever he mainlined coke and heroin.

You remember George Rodriguez did say there were times when he was under the influence of heroin and then there were times when it wore off.

And if you think about the testimony of Raymond Rossy, the way Anthony Rodriguez acted, the way he responded to a call, went down to the Triple A Car Service, went back to his apartment, delivered the quarter kilogram of heroin, is there any indication that he was acting under the influence of narcotics?

Indeed, the very exhibit which Mr. Figueroa placed so much reliance upon, the medical record from the Drug Addiction Program -- I stand corrected. I have been talking about Raymond Rossy, and of course it is Raymond Valentine.

When you think about that, the exhibit from the Detoxification Center, remember the portion that I read to you, which showed that a nurse examined Anthony Rodriguez the second day he was there and concluded that he was alert.

Certainly even during the period that he was trying to detoxify, when he claimed he was using a tremendous amount of heroin every day, even in that period of time there were times when he was lucid, alert and could respond to his environment.

I submit that there is no evidence that he was incapable in early August of 1975 of realizing what he was doing or realizing that the things he was doing were unlawful. Indeed, his brother George even realized that while they were under the influence of heroin they stole things from their parents to support their habit. Not that they took things, they stole things.

Stealing is wrong. If you steal something you realize that you are doing something that violates the law, something that is wrong. And I submit that there is no evidence in this case that Anthony Rodriguez failed to appreciate that what he was doing in narcotics was wrong.

Mr. Figueroa said over and over again, "I'm not looking for sympathy," and he said it so often that one would suspect that perhaps that is what he was looking for.

I submit to you, is it a defense that an addict commits crimes in order to sustain his habit? The fact that he takes heroin as well as sells it becomes a defense? I submit to you in this case that is not the case.

Luis Ramos, also known as Indio, was the second defendant, and his summation was delivered by Mr. Krieger, who opened with a question, "What is this case all about?"

That was the first question which Mr. Krieger put to you, and then he proceeded to talk to you about blue cheese and the moon, taking a trip to Mayor Beame, the talk about the conspiracy that has followed the assassination of President Kennedy, he talked to you about Marlon Brando and the Godfather, he talked to you about Lavoisier and flowgistin. In short, he talked about a lot of things, but none of which was connected with his client or the evidence in this case that concerns his client.

Indeed, it was three-quarters of the way through his summation that he even mentioned his client's name, Luis Ramos.

And then he said a number of things which were simply not borne out by the record.

First he said that quantitatively his client was mentioned least in the evidence of all of the defendants in this case, and that is simply not so. The evidence established that back in the summer of 1974 he and William Cortes-Rios were together at his social club and they were introduced to Benito Cruz at that time.

Pushing on into the fall of 1974, Indio

received a substantial quantity of heroin from Raymond Rivera in the course of his many trips to California, and that carried on to January lf 1974 -- I should say, first of all, December of 1974 was the time when he delivered the $25,000 in a paper bag to Fernando Gallardo in that bar with the sawdust on the floor. And then into January of 1975 there were four transactions with Benito Cruz, totaling a value of $100,000.

If you think that quantitatively that is the least evidence against any of the defendants in this case, perhaps you should think again.

Luis Ramos was in this conspiracy for a longer period of time and he was in it up to here (indicating).

Mr. Krieger also said that Benito Cruz never mentioned his client's name in discussing who he dealt with in January of 1975, and he did that by reading a very small portion of the record, I think one question and answer. Of course that was taken way out of context, because you will remember the testimony, and it went on for some time, about those four transactions, each one involving a half kilogram of heroin which Benito Cruz sold to Indio in January of 1975, a total of two kilograms of heroin for $100,000.

Finally, Mr. Krieger threw up something of a challenge to me. He brought back to your attention his questions on cross examination to Benito Cruz and he reminded you,"Do you remember when I asked him the questions when was the last time you saw Indio?" and Cruz said, "I saw him in Puerto Rico when I testified against him."

"And you saw him here in the courtroom?"

"Yes."

"And you saw him back in Puerto Rico?"

"Yes."

"And when was the last time before that you saw him?"

"I saw him in the courtroom."

And he asked what was a confusing series of questions and came up with the conclusion that Benito Cruz -- I am sorry; this is Raymond Rivera -- that Raymond Rivera was denying that he had ever known Luis Ramos except in a courtroom.

Then Mr. Krieger said, "And Mr. Moss had the power, if he wanted,to get back on redirect examination and to ask him questions to clarify that. Why didn't Mr. Moss do that?"

Mr. Moss did that. I don't know how it

has escaped Mr. Krieger's attention, but if he will look at page 1045 of the transcript he will see the following question and answer:

"Q Do you recall Mr. Krieger on cross examination asking y ou that you seen Luis Ramos before this trial at another trial in Puerto Rico?

"A Yes, sir.

"Q Was that the last time you hasd seen him before this trial?

"A No. I seen him in 1974.

"Q But before this trial, being in this courtroom and seeing him here, was the last time you saw him down in Puerto Rico in that court?

"A Yes, sir.

"Q Before that you had seen him before?

"A Yes, I seen him before.

"Q How often?

"A Well, often when I was selling him drugs and I was in the organization."

Mr. Krieger was suggesting to you that something didn't happen in this courtroom that did happen.

Mr. Broderick stood up next, and the first thing that he did was to completely ignore the fact that his client was identified by Benito Cruz as someone who had formed a partnership with Cruz in 1974, very early in 1974.

Fernando Gallardo said, "I'll give you heroin at $10,500 if you, Benito Cruz, will split the profit with Orlando Machado."

And Machado participated in that transaction.

Mr. Broderick didn't mention that at all when he talked about the three bits of evidence that deal with my client.

One of those three bits of evidence is not a bit of evidence at all, because it is not something the government is suggesting you should use in order to determine the guilt or innocence of Orlando Machado, and of course what I am talking about is the identification of Ferde Machado by Raymond Rivera.

Mr. Broderick told you yesterday that it was he, Mr. Broderick, who had established the misidentification, it was he who elicited from Raymond Rivera the fact that Rivera had identified a picture of Ferde Machado in the grand jury and nor Orlando Machado.

Ladies and gentlemen, that's not so. That contradiction and the misidentification was not brought out by Mr. Broderick, it was brought out by me on my redirect examination in order to present a fair picture to the jury.

Mr. Broderick said that the judge had to straighten the government out about this thing by telling you it was a misidentification.

If you recall, I think I can fairly state what Judge Broderick told you, and that was to announce the stipulation which the government entered into that there was a misidentification and that you are to disregard that identification.

So what Mr. Broderick seems to be suggesting is that the government is forcing this misidentification upon you, and it is no such thing.

The evidence in this case that deals with Orlando Machado comes from Benito Cruz and Police Officer Burbage, and to some extent from Raymond Rivera. And let me deal with that.

Mr. Broderick, in his case, and I think this was his entire case, presented to you a stipulation that if Raymond Rivera were to be called back to the stand he would tell you that in late spring of 1975 he heard from William Cortes-Rios a story about one of the Orlando Machado brothers -- I'm sorry; a story about one of the Machado brothers going out to California to pick up heroin, coming back and getting sick, and that it was his belief that the story he was talking about was Wilfredo Machado.

The truth comes from Benito Cruz, because it is Cruz who put that particular Machado brother on the plane with $230,000 in his suitcase. It is Benito Cruz who talked with Fernando Gallardo about that trip immediately after it happened, and it is Benito Cruz who paid that particular Machado brother $4600 for the brother's participation and trip to California. And of course the brother that we are referring to is not Wilfredo Machado, it is Orlando Machado.

If you have any doubts about that, consider the testimony of Police Officer Burbage, who was present in my office following the arrest of Orlando Machado, who was present when Orlando Machado was advised that he had the right to have an interpreter there, that there was an interpreter outside. He declined. That he had the right to remain silent, he didn't have to answer any questions, he could have an attorney present, and he went ahead and he answered questions. And in the course of that session, Police Officer Burbage told you, Orlando Machado admitted to making that trip and admitted to getting sick on the plane. So it is clearly not

Wilfredo Machado who made that trip, it is Orlando Machado.

And during that statement, which Police Officer Burbage heard, Orlando Machado also admitted that he collected money for the Gallardo organization, as much as 50 or 60 thousand dollars at one time.

Now, this morning Mr. Mendes began for the defense and he asked you how come Detective Guzman, when he went down to arrest Angelo Roche in Santa Isabel, Puerto Rico in March, how come when he searched the car and the house he didn't find any heroin?

Aha, doesn't that mean something?

It means nothing. This was not a conspiracy to distribute heroin in Puerto Rico. There is no reason why Angelo Roche or any other member of this conspiracy should have heroin in Puerto Rico. And, indeed, neither of the defendants who were arrested in Puerto Rico had any heroin.

Mr. Mendes also raised the innuendo that Raymond Rivera might have been fed the names of Angelo Roche and Cowboy, Jose Velasquez, by Juan Roman or somebody who had talked to Juan Roman, that he was programmed with these names and told "You'll testify about these people," that he never dealt with them, he never knew them; well, he will testify about them anyway because he had been programmed.

First of all, there is no evidence that that happened, and there could have been evidence elicited by the defense attorneys if they wanted to. Rivera was on the stand. They could have asked him, "Who was the first one to bring up the name Angelo -- who was the first one to bring up the name Cowboy?"

The defense attorneys could have asked him which way it went. But they didn't. They stayed away from it.

Now you are being asked to speculate.

Juan Roman was on the stand. He could have been asked, "Did you talk to Raymond Rivera?" But he was not.

If Raymond Rivera were fed the names how come he didn't know the names? He knew Angelo only by the nickname The Old Man. He didn't know his last name, Roche, even though Juan Roman knew the last name. So if Roman talked to him and fed him the name how come Raymond Rivera doesn't know Angelo Roche's last name.

MR. MENDES: Your Honor, I object.

THE COURT: Please. You put up your

hand. I have seen it before. Just put it up when you want to make an objection, Mr. Mendes.

MR. MOSS: Jose Velasquez is the same thing. Raymond Rivera did not know Jose Velasquez' full name. In face, he knew him by the nickname Vaquero, but he also knew him by the nickname Rafael.

If his name had been fed to him, how is it that he wouldn't know the right name?

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But perhaps more fundamental to the charge that the government in this case has put the suggestion into the government's witnesses whom they should testify against, that somehow an agent of the federal government has decided that he will try and obtain the conviction of innocent people by putting the names of innocent people into the mouths of government witnesses, if you think that I, if you think that Mr. Ziegler or any other federal agent would jeopardize his or her career beyond a reasonable doubt to convict these people by doing such a thing, then take about 30 seconds in your deliberations; if you think that is what happened here, come back in 30 seconds and acquit every one of them; if that is what this case is about and you think that is what this case is about, you have no business taking any more time than 30 seconds.

Mr. Mendez also said that he would not appeal to your emotions, but at the same time he asked you the question: When you think back on this trial will you say did I do justice to that aging man? Will he die in jail because of something I did. I submit to you that he was appealing to your emotions.

The verdict in this case is one that is to be made on the facts. It is not your province to determine what, if any, consequences will come of a verdict of guilty if you should render it. That is something that Judge Broderick will contend with, if and when the time comes. You are not giving anything to the defendants; you are not taking anything away, just like you are not giving anything to the government or taking anything from the government no matter which way you decide on your verdict. You decide what did or did not happen beyond a reasonable doubt, and then the matter with Judge Broderick.

Mr. Cunniffe then rose and made another appeal for your sympathy. He talked about his client Carlos Santiago being a sick man, physically ill with rheumatic fever. I submit to you that even a disabled person who has open heart surgery is criminally responsible for his activity if he distributes heroin, and his physical condition makes no difference. Mr. Cunniffe suggests that you cannot believe that Raymond Rivera knew Carlos Santiago before last summer, because in his debriefing report there is used the name Carlitos, instead of his full name, Carlos Santiago. I suggest to you that is non sequitur; it does not follow. If you work together with someone, and if Rivera worked together with Carlitos in the late '60s, you don't have to know his last name. You can work together as power press operators for a local union and work with each other and know each other on a first name basis. Is there any explanation how Raymond Rivera knew that Carlos Santiato was in Local 3 in the late '60s but for the fact that they must have been working together? Local 3 is a big union. If the only time Raymond Rivera had ever met Carlitos was that one chance brief meeting last summer that Carlos Santiago testified about, how does Raymond Rivera know so much about Carlitos' background? It doesn't make sense if you accept the story that you received from Carlos Santiago; is makes sense if you accept Raymond Rivera's story.

Did Mr. Cunniffe explain to your satisfaction why Carlos Santiago bolted from his home when the agents came to arrest him? Mr. Cunniffe said that he might have been scared by guns, but that he turned himself in as soon as he knew what the problem was. I submit to you, ladies and gentlemen, that as soon as he knew what the problem was, that is when he bolted out the door, and it was not until an hour later when he had time to collect his thoughts that he decided the best thing is to turn himself in. And the reason he knew to turn himself in is because he realized that those people who came to his home were agents. And he would not have turned himself in, unless he understood their purpose.

Then Mr. Stokamer rose and he presented a series

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of arguments based upon inconsistencies between Raymond Rivera's testimony and what he told Agent Amador in the debriefing statement a year ago. The first thing I have to say about that is the inconsistencies he is talking about are very petty and don't really go to the issues in this case. Whether Raymond Rivera took a taxi from John F. Kennedy Airport or was driven by William Cortes is not something that is of primary concern; it is a very small detail. Perhaps when Raymond Rivera returned from California he got taxis at times and at other times perhaps he was picked up, and his recollection about any particular incident may change from one year to another.

What was the precise amount of the down payment on his house in Puerto Rico? Is that important? What day of the week did Antonio Morales drop by to pick up the quarter kilogram of heroin? Notice, the question was not, "Are you sure it was Antonio Morales who dropped by?" That has been consistent throughout. Raymond Rivera knows with whom he dealt. But they tried to catch him and confuse him by the fact that he cannot tell you what day of the week it is. Three years ago? Would you remember? And I submit that if Raymond Rivera does not remember that, it is not a flaw or defect in his testimony; it just shows he is talking about events that took place a long time ago.

The inconsistencies that really developed were inconsistencies developed by Mr. Stokamer himself. At one point he challenged the fact that Raymond Rivera might not have remembered the difference in Antoni[illegible]rales' haircut; perhaps he didn't know him well er[illegible]ecause he could not tell the difference in the haircut. But, then, on the other hand he argues exactly the opposite. He says the reason Raymond Rivera testified about Antonio Morales is because they were such good friends, because they had known one another for so long. Which is it?

Mr. Stokamer argues that Raymond Rivera had to give up new people, that the government was not interested in people they had evidence about already, so he had to come in and tell you about all sorts of people against whom they had no evidence. But then he tells you that maybe the reason Raymond Rivera mentioned Tony Morales is because he knew that the government had searched his apartment and found heroin. And as to that incident in which this heroin was seized, what was Mr. Stokamer's response to the fact that heroin was found in Tony Morales' apartment? It was twofold, that it was embarrassing, that it was not important, the fact that heroin was found in his apartment, cutting paraphernalia, that heroin is thrown out of the window does not mean a thing when you are considering whether or not he participated in this conspiracy. And then, second of all, he suggests you should not rely upon the fact that an informant had told the government that that was Morales' apartment. That was not enough. They should have had the landlady, they should have had the building records. And I submit to you that the defense has the opportunity to subpoena records and witnesses, the same way the government does. If a landlady could have taken the stand and said that was not Antonio Morales' apartment, you can be sure that the landlady would have been called to the stand and that evidence would have been put before you.

r2 Mr. Linn stood up and told you his client is innocent, or, at least, has not been proven guilty beyond a reasonable doubt because the heroin that has been brought into this courtroom was not directly attributed to his client. But, of course, there was testimony that his client sold heroin to an undercover agent on two occasions in the summer of 1974, and, in fact, it is that heroin and those sales for which he is receiving a prison term right now. Clearly, that was heroin. The fact that it is not on the table now, that I am not waving it in front of your faces, does that affect the guilt of his participation in this conspiracy?

Mr. Linn raises again the spectre how come there is no hotel record to show when Raymond Rivera checked into the Garvey Motel on his first trip. He did not check in. William Cortes-Rios checked in. If Mr. Linn could divine the name which William Cortes-Rios used then, he could go to California, get the records and bring them in. The fact that Raymond Rivera cannot testify what the name is does not make one bit of difference in this case. Again, this is just a smokescreen kind of argument to take you away from the defendants on trial, to focus your attention --

THE COURT: Mr. Moss, it is 6 o'clock. Would you please end?

MR. MOSS: I will, your Honor.

Let me turn to Mr. Landau. Among his arguments he told you that Raymond Rossy did not tell anyone about the $140,000 that he had hidden in Puerto Rico until he was asked about it on cross-examination, and on the basis of that he wants you to conclude that Raymond Rossy lied, that he is a liar and a perjurer. I cannot think of a better example of how I could show that Raymond Rossy is not lying than that, because he told the truth during that cross-examination and it cost him $140,000. Think about that. When he was asked on cross-examination, he told the truth; he didn't lie; he had not lied about it; he simply had not told anybody, and when it came out, when he was asked, did he lie? He did not; he told the truth and it cost him a lot of money. Why did he do that? Because his aim, his objective was in taking the stand not to commit perjury, but to tell the whole truth.

Mr. Landau suggested that Rivera and Rossy were never charged with other crimes, income tax evasion, perjury and so forth, as though the government had nothing better to do than to prosecute people who have already been indicted, already have been convicted, have already been sentenced, and several of them are already serving jail terms.

Ladies and gentlemen, many of the government's witnesses were participants in this very conspiracy. Their activities have ceased; they have all, with one exception, Luis Rodriguez, been sentenced by judges to sentences those judges deemed to be fair. Several are serving sentences right now that will only end when the Parole Board determines that it is in society's interest to release them. Indeed, one of the witnesses, Raymond Rivera, will spend the rest of his life looking back over his shoulder in the witness protection program. Each of these witnesses is paid or is paying his debt to society. None of them, you can be sure, will ever again be accepted into the narcotics community. But their fates are not in your hands. In spite of the fact that each defense attorney would like you to forget about these defendants and retry the witnesses, exactly the opposite is the case here. It is these defendants who are on trial. Those witness have already had their opportunity to be brought before the bar of justice.

What the defense comes down to is this: the defense hopes that you will turn a cold shoulder on the government's witnesses and all the rest of its evidence because of the crimes committed by the witnesses and because these crimes have been awful and outrageous. These witnesses have admitted their crimes; they have been brought to justice and they are now in situations where they are free to tell the full story of their conspiratorial activities with these defendants as well as with other conspirators. I ask you not to turn a cold shoulder on them or on all of the other evidence in this case. As Mr. Mendez told you, there is too much involved; there is a lot of narcotics; there is a lot of money involved.

Mr. Linn pointed out to you that there was very little heroin brought into this court and that may be because this was an immensely successful conspiracy. By and large the heroin that they picked up in California was distributed on the streets of New York, and in return hundreds of thousands of dollars filtered its way back up through the pockets of these defendants and their co-conspirators. I submit to you, ladies and gentlemen, that the evidence in this case proves that each of these defendants willingly and greedily shared in the enormous profits of the narcotics trade. I also say to you that it is now time that they shared in the guilt.

Thank you.

THE COURT: Ladies and gentlemen of the jury, we will now adjourn until 10 o'clock tomorrow morning. Tomorrow morning I shall deliver the charge or instructions, and then you will commence to deliberate. I ask you that you bring overnight bags with you, because once the jury begins to deliberate it will be sequestered. So come prepared to stay tomorrow night.

Please don't discuss the case with one another. You will have ample time to discuss it after my charge is delivered and when you begin to deliberate. But for the present, don't discuss the case with one another or with anyone else.

Good night.

(Jury excused)

MR. FIGUEROA: I suggest if it is at all

mmhh 11

possible we go down in the order of summation of defense counsel as you hear us on our objections on the rebuttal. May I commence?

THE COURT: Well, I would prefer to follow along the lines of the various objections that were made in the course of the summation. The first objection was made by Mr. Mendez and Mr. Mitchell with respect to the nature of the conspiracy.

MR. MITCHELL: Your Honor, I objected to that, because the nature of the conspiracy and how it survives is not rebuttal to anything that was said by any defendant. That is my objection. He had no right to rebut on that.

THE COURT: Well, in any event, he was moving into a province which is not the province of the attorneys for either the government or the defense. I will be charging the jury with respect to the conspiracy tomorrow.

The next objection was by Mr. Broderick, which was apparently to the statement that the defendants were engaged in a huge conspiracy.

MR. BRODERICK: I believe the word Mr. Moss used was that the defendants' attorneys' in their summations admitted the conspiracy. Of course, I never admitted it at all.

THE COURT: There are nine defendants, counsel, and I think if we took a vote we would probably come out 5-4 in favor of it being a huge conspiracy.

MR. BRODERICK: Your Honor, I think he stated that all of the defendants admit the conspiracy, but, of course, it is not an accurate statement.

THE COURT: I shall instruct the jury tomorrow that any statements made by counsel with respect to what the evidence is is not binding on them, or arguments made by counsel as to other counsel are not binding.

The next objection was by Mr. Stokamer, and he objected to remarks with respect to the finding of heroin in connection with Tony the Mechanic.

MR. STOKAMER: I believe, your Honor, it was an objection to what Mr. Moss stated were my contentions, which were, in effect, not my contentions at all at the time.

THE COURT: I think I just stated to Mr. Broderick that I will cover that in my charge.

The next objection was by both Mr. Linn and Mr. Broderick and it had to do, I believe, with Mr. Moss' statement that Mr. Rivera was now a free man in the witness protection program.

MR. LINN: Well, your Honor, I think we have avoided the word "protection" throughout the trial.

THE COURT: I think this is, again, going to have to be dealt with in my charge. The word "protection" has come up a number of times in the course of the case: it has come up in the context of the Puerto Rican trial and it has been quite clear to the jury that Mr. Rivera is in the witness protection program, because that was elicited in the course of cross-examination. A stipulation was made to the jury that there were no threats made to this witness by anybody in connection with this trial, but that there had been threats and he was in the witness protection program. This came up later when I think defense counsel objected, and I think I shall have to cover this again in my charge, to make it perfectly clear that any reference to the witness protection program has nothing to do with this trial or with any of the defendants.

Will that handle it?

MR. LINN: Yes.

THE COURT: The next one was Mr. Linn, and it had to do with the statement that Mr. Cruz is free and why should he lie.

MR. LINN: My understanding is I don't know whether Mr. Cruz is free or on parole, and there is quite a bit of difference.

THE COURT: Well, again, this is something which can only be based on the testimony in the case, because there was testimony as to what Mr. Cruz's present status is, and I will cover that in my charge. But the recollection of the jury and not the recollection of the attorneys controls.

MR. LINN: I just want to point out there is a difference between a man being free and on parole, and I think that is his position in the state system, one to life.

MR. MOSS: I don't think that is the position that Mr. Linn took during his summation. I think that each of the defense attorneys suggested that Benito Cruz has somehow been released with his parole and it is something that has inured to his benefit. The simple fact is that he is free in this sense, that he is no longer in prison, and he indicated to the jury he is free because he was paroled last month.

MR. FIGUEROA: I will raise my hand on that one. My assumptions went a little bit further than that, because I think it is unfair to argue to the jury as the government did on that particular point, because of the very obvious reason why he lied, even though he was on parole, that he is still paying off an old debt, and if Mr. Moss were to take a personal approach or personal opinion that he has already paid off his debt is really away at odds with the motivation of the witness during his testimony. That is why.

THE COURT: I was not aware all during Mr. Moss' summation that he took the personal position. I think he was making arguments that he was submitting to the jury.

MR. FIGUEROA: It is not a personal position; it is a personal opinion -- he is on parole, he doesn't have to lie. But he is paying off an old debt which antedates his being a witness.

MR. BRODERICK: That is how he became free.

MR. FIGUEROA: He can't go back on that because he will go back to jail. It misleads the jury.

THE COURT: What is your suggestion? My recollection is on this particular issue it was put in the form of a question to the jury, not a statement. What is your suggestion?

MR. FIGUEROA: My suggestion would be in view of what has been said to the jury, the fact that they can consider the possibility that he may be paying off an old debt.

THE COURT: I shall instruct the jury that it has heard the contentions of counsel and that it should pay attention to those contentions and accept those that it deems worthy of accepting and reject those that it deems worthy of rejecting. It seems to me that will cover this, because certainly through the final summations by defense counsel there were all sorts of permutations made available to the jury here on every one of these witnesses, particularly the witnesses Rivera and Cruz and Rossy.

MR. LANDAU: With reference to the same, I believe the way that Mr. Rossy addressed the jury in his rebuttal summation, he was in effect telling the jury he is free and there is nothing hanging over him. We just discussed the matter with reference to his parole. But there are other things hanging over him. The government if it chose could still indict him for all of those things the government has not indicted him for.

THE COURT: Isn't that before this jury? The cross-examination of every one of these witnesses developed that, and, certainly, in argument to the jury on summation various counsel also developed it.

MR. LANDAU The prosecutor, the representative of the government, in effect was telling the jury that that does not hang over him. It is not a question of an attorney saying it; it is a question of a government representative who has those powers of telling the jury that this does not hang over those people. And it does. If they saw fit they could turn around and indict all these people.

THE COURT: Again, the jury is going to be told tomorrow that the government has no different status here than any other litigant, and that certainly means that Mr. Moss' suasion should carry on more weight than the suasion of defense counsel.

MR. LANDAU: Your Honor, I respectfully submit that what he put forth to them is not true. If the government decided to prosecute them, it could.

There was talk about the conspiracy, and Mr. Moss said, in effect, that they cannot be charged with that, and even if your Honor were to try to correct that tomorrow, and you say Mr. Moss is in the same position as any other lawyer, I submit to your Honor that Mr. Moss bears that aura of being a prosecutor, a government prosecutor, and it is the prosecutor who can bring charges or not. I think that is a misconception that got across the jury and it is a crucial point because of the motivation. Mr. Moss, it sounded like, said they have no motivation to lie, they have pled guilty, they were sentenced and some of them are out already. But that is not true, because the government can, if it deemed fit indict them tomorrow for all of these admissions they made.

MR. BRODERICK; I think we can determine whether or not that is true very simply, by just inquiring of Mr. Moss now that the jury isn't here as to what exactly the agreement is. I suspect the agreement with them was that they would receive a short term or probation or whatever. I am sure there was also an agreement with the witness that he would testify and if he did not keep that agreement which he made, say a year or two ago, they could indict him.

THE COURT: Mr. Broderick, I am sure if there were an agreement made with respect to any one of these witnesses, that agreement would have been made available to you in the 3500 material.

MR. LANDAU: Your Honor, these agreements are not necessarily in writing in my experience. They are discussed and they are spoken about and in some cases they put it in writing and in many cases they don't.

THE COURT: Well, I will be glad to hear from Mr. Moss.

MR. MOSS: I would not blame you if you did not want to hear anything more from me today, but the agreements with respect to all of these witnesses were set forth and brought out by the government in its direct. I think it is just not in the case that, for instance, Raymond Rivera, part of his agreement when he pled guilty down in Puerto Rico and when the judge sentenced him, there was no understanding that if he did not testify the government would call him back and say that his role had been violated. That is just not part of the agreement, and, in fact, it is on the record that is not part of the agreement. He testified about that. I think the agreements with these witnesses have been fully explored on this record.

MR. LANDAU: Your Honor, if I may, it's not that parole would be violated, it's an agreement that an agent, an understanding that an agent, when doing his job and interviewing informants and turning informants, has with him about the cooperation and so forth. That, of course, all came out, and that cooperation will be brought to a sentencing judge's attention.

But there is also an understanding that "When we call upon you to testify, you will testify."

I'm not concerning that his parole is going to be revoked, because a parole officer would not necessarily go along with what the government says about that.

What I am concerned about is the fact that this witness knew that they are calling upon him, he is going to have to testify about all of these things, and also that the government is not bringing these charges against him.

There have been no federal indictments on any of these things, and if he didn't testify, in the back of his mind is that knowledge. The statute of limitations hasn't run on these.

THE COURT: You are suggesting if Mr.

Rivera wanted his flanks protected he should have gotten it in writing.

MR. LANDAU: His protecting his flanks doesn't do anything for these defendants or help any defendant here. His not getting it in writing does not help my client.

All I am respectfully putting forth is that there is that motivation because there is a sword over his head. Ask Mr. Moss.

If the government chose to, for whatever reason now, if Mr. Fiske says, "I want to indict that man on the basis of these statement that he made," could they not go in and get a grand jury indictment?

There is no statute of limitations that runs. That is hanging over their heads. Mr. Moss as a government in effect told this jury that that doesn't exist, and that is crucial.

MR. MENDES: I would like to join Mr. Landau. I think an instruction should be given to the jury in that respect, because it is a big misconception as to that.

He does have motivation to testify, because he could be indicted any time if he decides not to testify and not to cooperate in this case.

MR. BRODERICK: Yes, your Honor. I suggest another part of this is the proof is in the doing.

I don't think anybody in this courtroom now is going to believe that Cruz voluntarily comes in to testify. He wouldn't waste his time. He would just say goodbye to all of us.

I think the fact that he is actually here is proof that there is some kind of an understanding.

Secondly, I know from experience with a client in the Witness Protection Program that Rivera is in that there is a definite understanding when you go into the Witness Protection Program that you will do exactly what the government needs you to do in cooperation, including testifying. I have had a client do this.

You have to be totally cooperative when you are in the witness protection program, otherwise you get thrown out of the program.

We know Rivera is in this. I suggest these people are not coming here because they have nothing better to do. I say the proof is in the doing, in the pudding, and the fact that they are testifying, they are not testifying because they like it.

There has to be some kind of a deal.

MR. MOSS: I haven't heard anything this afternoon that is new, that hasn't been made crystal clear in cross examination, that hasn't been brought out on the record before.

I think it just boils down to the defense attorneys want a surrebuttal, that if they forgot to make a particular argument --

THE COURT: I think that would solve this whole problem.

MR. LINN: Can we have just one more shot?

MR. MOSS: Do I get a surrejoinder?

MR. LANDAU: Can I comment on what Mr. Moss said?

THE COURT: Mr. Linn was standing up first.

MR. LINN: The question is when they testify before a grand jury do they waive immunity?

I think the answer is they would have to sign waivers of immunity.

THE COURT: I think if this is something which was not brought out in connection with cross examination of these witnesses it must be the only thing that wasn't brought out.

MR. LANDAU: Judge, if I may, and I will just close off what I am saying:

What I objected to when I first stood up and raised this whole issue is that Mr. Moss, who is a government representative and the prosecutor, led this jury to believe that there is nothing hanging over his witness' heads, and I submit that the statute of limitations has not run on these charges, and what is hanging over their heads is the possibility, remote or not, that the government has the ability to go in and secure indictments against them and/or turn it over to the state, where the charges are even greater, because the statute of limitations on these events has not run and they have not been indicted.

That is sufficient incentive for this kind of person to get up and testify the way they did. And Mr. Moss, in his surrebuttal, brought it to the jury's awareness the way he was talking, what he was putting forth, that that doesn't exist, and I am submitting that that's not true.

I am not talking about Mr. Moss putting forth a rebuttal argument, I am submitting that he put forth something to them that is not true, and I think that it should be brought to the jury's attention in all fairness, in all equity, that the federal government still has its ability to indict these people, that they can still be indicted by the state government also for all of these crimes which they have been talking about, and not as Mr. Moss wants the jury to believe, thaet that no longer exists so they have no motivation.

MR. MOSS: Your Honor, I never said that.

THE COURT: You did say that Cruz is free now, why would he lie?

MR. MOSS: I said why would he lie in order to incur responsibility for another future crime of perjury?

MR. BRODERICK: I don't recall it that way, your Honor.

MR. CUNNIFFE: I don't recall it that way, either.

THE COURT: Well, what is your suggestion, gentlemen?

MR. MENDES: An instruction, your Honor, to the effect that Raymond Rivera could still be prosecuted for this conspiracy if the government so decided or so chose.

MR. LANDAU: That they all could; each one of them, Rossy, Rivera and Cruz, are still liable for these crimes because the statute of limitations hasn't run and they are liable to the federal government and to the state government because they are violations of both.

THE COURT: I don't know. I don't know if they did receive immunity before the grand jury.

MR. LANDAU: Immunity didn't come into it until Mr. Linn brought it up, and Mr. Moss can state whether they have immunity or not.

MR. MENDES: Certainly in the 3500 material which was handed to us, immunity is not mentiolned.

MR. LANDAU: So there isn't any immunity.

MR. MITCHELL: There is no warning, your Honor, in their grand jury testimony.

THE COURT: All right.

Suppose you gentlemen draw up a suggested charge in this area and show it to Mr. Moss and submit it to me the first thing in the morning.

I am not saying that I will deliver it, but I will look at it.

Gentlemen, we will be here until about 10 o'clock if we keep going this way. Maybe the original suggestion of Mr. Figueroa was that we go down the schedule of attorneys will be better.

Mr. Landau, do you mind if we revert to the original schedule?

MR. LANDAU: Yes, but I will go on.

Well, we just covered one of my big arguments.

MR. FIGUEROA: Your Honor, I had suggested the order of summation where we did reverse the schedule.

THE COURT: I am sorry.

MR. FIGUEROA: I think it is fresher that way.

THE COURT: Mr. Krieger.

MR. FIGUEROA: I go first merely by coincidence, your Honor.

The real objection I have against Mr. Landau's rebuttal -- and I think I am on very firm ground --

THE COURT: I think you mean Mr. Moss.

MR.FIGUEROA: The real objection I have, and I think I am on very firm ground, when Mr. Moss said, "Do you think I would jeopardize my own career?"

Now, this is a drastic statement to make in front of a jury, and I have a case in the Eastern District, 1973 -- I forget the name of it -- where an assistant United States attorney said the very same words or very similar words. He vouched for the credibility of his witness, and not only that, but his own integrity, before the jury.

I think, your Honor, this is beyond any limiting or curative instructions that the court could give at this time.

The jury has left already. They are left now with Mr. Moss's ringing exhortation in their ears that he vouches for them, his integrity is put to the fore. And this is particularly meaningful in this type of a case, your Honor, where I and many of my co-counsel have gone out of our way to say nice things about Mr. Moss.

Your Honor, it sounds humorous, but it is also very relevant, because had we attacked his integrity, then he perhaps could have an excuse and say, "Well, my integrity has been attacked, this is fair comment."

But there was none of that. Uniformly we all said good things about him. And this, your Honor, I think is something that the court has to deal with and it has to be in strong language.

I don't say it would overcome the impact of what Mr. Moss has done here today, but I think at least some attempt should be made.

Also, when you take into account the fact in conjunction with his integrity being placed before the jury he said about one of the witnesses -- I don't recall the name right now -- he said, "His aim was not to commit perjury," again Mr. Moss substitutes his own veracity for that of the witness.

Further, they are now free, talking about his witnesses, to tell the full story merely because they are on parole. This is sort of a corollary to the last argument we had, whether they are indeed free.

Your Honor, I think taking into account the numerous instances where Mr. Moss had a tendency to do this as far as the witnesses are concerned, I think it is beyond, really, any curative instructions to the jury at this time and I move for a mistrial.

MR. BRODERICK: I join in that.

MR. LANDAU: I join in that.

MR. MENDES: I join in that. I would like to join in Mr. Figueroa's motion on the same ground. I have an additional ground when he is through.

MR. LINN: I would also like to join in, your Honor.

MR. KRIEGER: Everybody joins.

THE COURT: I don't think anybody is held back.

MR. FIGUEROA: While we are on that subject, your Honor, I take it that when one counsel makes an objection we all are deemed to have joined in that objection. Is that correct?

THE COURT: Well, I think we made that arrangement right at the beginning, unless somebody specifically excluded themselves.

MR. FIGUEROA: Your Honor, there were otbher things, of course.

One of the things Mr. Moss said, which was not anywhere near -- of import as much as the other objection was, the fact that several attorneys perhaps did bring out the sex habits of one of the witnesses, I think it was Rivera, and this was merely done as to motivation.

I believe during the trial it developed or it was inquired into whether part of the motivation for Rivera to testify was not the fact that Cortes, or William Cortes, had made advances to his wife or vice versa, and I think this was really very germane to motivation.

For Mr. Moss to take the tack that here we are, at least some of us, dirty old men going into somebody else's sex life --

THE COURT: I don't think that was the tack he was taking. I think that he was dealing with the rather modest attack on Mr. Rivera's credibility which was made by some of defense counsel, and he was saying, at least as I heard him, that when there was inquiry into this very personal area, that really did not seem to have much to do with the issues of this case, he answered the question; it must have been painful to answer them and he answered them honestly.

I thought it was a fair rejoinder to the attack on Mr. Rivera's credibility.

MR. FIGUEROA: I thought defense counsel really was just keying on his motivation to testify against William Cortes-Rios and perhaps in turn to becoming a government witness in the first place, the fact that there was some sexual misconduct between him and Cortes and their respective wives.

If the court please, I will pass on to more specific objections I have relative to my own client.

I think Mr. Moss indicated to the jury at least the factual allegation that there was no evidence that during August, 1975 that there was any drowsiness or sleepiness on the part of my client as going to his capacity as far as intent to commit the crime of which he is charged in count 27.

I would point out that there is in fact evidence that he was, during August at any rate, drowsy and sleepy because that's what the medical record itself says.

I think I read this to the jury where on page 8 of Defendant's Exhibit B they admitted a 20-year-old for heroin addiction, appears slightly drowsy, and this was as of August 25th. And there were other indications. For instance, the initial evaluation indicates that the defendant was nodding and there was a lack of coordination.

THE COURT: But, Mr. Figueroa, you are arguing from the evidence. You did that before the jury and Mr. Moss did that before the jury. What is the point of arguing it again before me?

MR. FIGUEROA: I am not arguing it before you.

He said there was no evidence to this, and that is a misstatement of the record, because there is evidence --

THE COURT: You already discussed that evidence, had you not?

MR. FIGUEROA: Yes, yes.

THE COURT: And you waved the paper in front of the jury. The jury knows what you said and he is using that as a take-off point.

It seems to me that that was argument -- maybe it was inaccurate argument, and that I think will be straightened out by my charge tomorrow.

MR. FIGUEROA: That's all I have, your Honor.

THE COURT: All right, sir.

MR. MITCHELL: Your Honor, could I be excused for one minute to make a phone call? I will be righut back.

THE COURT: If you don't mind that we continue.

MR. MITCHELL: No.

THE COURT: I am sorry. I did have the order of the cross examination down but I don't remember it.

MR. LANDAU: Mr. Krieger is next.

THE COURT: Mr. Krieger.

MR. KRIEGER: If your Honor please, so long as your Honor emphasizes that any disparity as to the testimony is a matter that is to be resolved by the jury and the jury alone, that would take care of the specific issue as to whether Mr. Moss properly and fairly reflected what I had said on my summation.

But aside from that, what we do have, and I certainly join with Mr. Figueroa in seeking the withdrawal of a juror and the declaration of a mistrial, was a blend of prosecutorial drum beating, vouching for the credibility of witnesses and setting forth the veracity of a quasijudicial officer, a prosecutor, in furtherance of prosecution witnesses.

Now, if your Honor please, I have been around for some time. I am very well aware of the old prosecutorial ploy whereby the prosecutor says in a moment of great anguish, "If you think that these witnesses are lying, then you go right into the jury room and come right back with a verdict of not guilty." That has gone on for a long while.

But what we do have is a slight offshoot of it. We have not simply that, but what we do have is very, in essence, young prosecutors who, in essence, are stating that "If you think that we are going to jeopardize our future in any conceivable way, professionally or, if you will, as representatives of law enforcement, then, in essence, members of the jury, you would be completely erroneous."

So therefore what we do have is, in essence, a buttressing of the government's case by, in essence, setting forth to this jury that Rivera, Cruz and the other assorted government witnesses must be telling the truth because if they were not would these young men jeopardize their own careers?

Now, that is an unfair inference.

The Lumbard Committee, in its presentation as to prosecutorial and defense responsibilities, makes very clear that you certainly can fight hard for your client. I like to believe that each of us have done it here. You can fight hard, but you have got to fight fair.

Now, the rules have been very rigidly set forth. With one isolated exception, nobody has ever mentioned that fully 50 per cent of the counsel here are assigned. Nobody has ever brought forth that, so far as defense counsel who are assigned, our pecuniary reward, whatever it may be, will be whatever the court allows.

Nobody on the defense side has said, "If youilike me, if you believe, if you think I am an honest man, then you have got to acuit."

Now, there is one additional point that certainly could not pass notice, and that is that Mr. Moss has observed Judge Friendly's ancient observation when he said, "I wonder why prosecutors are so foolish as to express their own opinion when all they have to do is use the English format, 'I submit.'"

Obviously that is exactly what Mr. Moss has done throughout his presentation. He says, "I submit, I submit." But he does it encompassed and cloaked in such a presentation of his own veracity as to make it veritably intertwined.

And I think what we did have -- I certainly thing I never complimented him. I don't think it is my job to compliment a prosecutor. But for those who did and who built him up and for him to adopt that build-up and within his own embrace buttress the testimony of Rivera and Cruz I think is unfair.

If he's got a good case why get himself

emotionally involved? But yet, unfortunately, that's exactly what happened.

MR. MOSS: May I respond?

THE COURT: Yes, sir.

MR. MOSS: At least two defense attorneys in the course of their summations suggested quite clearly that someone in the government had fed the names of certain of these witnesses, certain of these defendants, to witnesses for the government, and that it was only because that had been done that these witnesses identified these defendants in court. That is a serious charge against the government.

There was also evidence in the course of this case, and it was brought out, that these very same witnesses had been prepared by myself, by Mr. Ziegler, and had been debriefed over long periods of time by federal narcotics agents. The clear suggestion is that either Mr. Ziegler or myself or other agents of the government did something that was improper; we fed the names of people to these witnesses in order to get them to regurgitate those names and testify against those people.

I think if I had not stood up and said what I did, which I believe was entirely proper, the jury might have concluded that I was accepting that argument and that that is indeed what happened.

What I said to the jury was that if they believed that this case arose not because the testimony comes from the mouths of the witnesses but comes from the government putting that into the mouths of the witnesses, then they should acquit, and I don't think there was anything improper about that in light of the attacks which were made by the defense attorneys in their summation.

MR. MENDES: I would like to speak in regard to that, your Honor, because it was me that referred to the testimony of Agent Roman. And I said in my summation that probably the conversation in which Roman and Mr. Velasquez were engaged in the bar some time in 1973 was the genesis of Mr. Angelo Roche's problems, and I said that they were aware of the long conversations and the long interviews Mr. Rivera was subjected to by the government, and I said then probably the name of Mr. Roche, during the interviews, had come out and that they could infer, if Rivera is looking for people the way he was looking for people, he could have gotten Mr. Roche and had decided to include him as a conspirator in this case.

I think for the first time Mr. Moss has been improper in his argument to the jury, because he tried to convey to the jury that I had -- that I had tried to induce them to believe that he and the agents had programmed Mr. Rivera.

I never said such a thing. That was never my thought.

I did say that Mr. Rivera had taken the name during an interview in which it was probably mentioned the fact that Mr. Roche had been present in a narcotics conversation, and that being Mr. Rivera is the type of being he is, he had decided to include Mr. Roche as a conspirator in this case.

It was never my thought, it were never my words, that Agent Roman had induced Mr. Rivera to lie or to frame Mr. Roche; not Agent Roman, not no one in the government.

It is then responding to that that Mr. Moss vouches for Roman, vouches for his integrity, which is okay. But he conveys to the jury the thought, the belief, that I, as an attorney for Angelo Roche, tried to incude them to believe that Roman, the government, had framed Angelo Roche. I never said that.

And I submit to your Honor that this is highly, very highly prejudicial to the case of Angelo Roche, because it is not Rivera that the defense is attacking, it is the United States Government, it is Mr. Roman, it is the whole system. it is Mr. Moss. And he has put on the line his career, his future, his profession.

What can Angelo Roche do now to erase that impression from that jury?

I was one of the attorneys who commended Mr. Moss, and I did it because I frankly believe he had done a great job up till now. But with deep sorrow in my hear I have to say that he was improper this time, and that he has done a great harm to justice in the case of Mr. Angelo Roche.

I don't contemplate this jury giving an impartial deliberation to Mr. Roche, and I think in a case like this a mistrial should be granted, because I don't see any way in which the damage that Mr. Moss has done can be put right.

MR. LINN: Your Honor, may I speak?

THE COURT: Yes, sir.

MR. LINN: I have to join Mr. Mendes' arguments and I have to note that somehow whatever affects Mr. Roche spills over to my defendant, Velasquez, so I have to join in each and every argument that he made and I join in his motion at this time.

MR. BRODERICK: Yes, your Honor, very briefly.

Of course I join with the motions of my colleagues at the defense bar.

Your Honor, one of the rationales behind the rule that a prosecutor can never put his personal reputation on the line to a jury is that the jury may well then get the impression that they have to choose between, in this case, Mr. Moss or, for example, Orlando Machado, and that's the rationale behind many of the appellate decisions I have read -- I can't quote any at the moment -- which granted a mistrial under those circumstances, both in the state and the federal courts, because it so grossly unfair that there is no way that your Honor can try to correct it by a charge tomorrow.

For these reasons I move for a mistrial and join in the other motions.

MR. STOKAMER: Your Honor, I join my colleagues in the motion for a mistrial concerning Mr. Moss' vouching for himself. I won't repeat what was already said, but I would like to address myself specifically to something that Mr. Moss said in connection with the matter concerning arguments by some counsel that may or may not have been made concerning whether or not federal government agents, or Mr. Moss himself, fed answers to witnesses.

I never did that. In fact I very specifically told the jury that I was not inferring that, and had that happened the contradictions would not have been there. I specifically said that the agents and Mr. Moss acted in a very honest way in not presenting Mr. Rivera with all of the contradictions prior to trial but, rather, that he let them come out.

Regardless of what happened to other counsel or what other counsel may have said, I submit that I opened no door, and the fact that some other counsel may or may not have opened a door should not affect me or my client, because Mr. Moss and the government decided to make this a mass trial, not myself and not Mr. Morales, and I submit that I waive nothing.

I would agree with Mr. Figueroa that any harm that has been done -- and I submit that it is severe -- cannot now be cured.

Additionally, I also strongly object, and

I think it is really anotehr ground for a mistrial, to Mr. Moss' statement to the jury that I should have called a witness, I should have called someone.

I have no burden to do anything. I merely said to the jury that the officers could have done a better job, that they merely acted on the word of an informer, a suspect's word, and had they wanted to check it out they could have and that they didn't.

I submit I opened no door to have Mr. Moss challenge me to call a witness, which I really didn't have to do in any way. I have no burden to call any witnesses, any landladies or anybody else.

I submit that that harm in itself should warrant a mistrial.

THE COURT: Let me deal with that one.

I agree with you that you are under no obligation to call a witness and it does seem to me that that can be very adequately handled in my charge.

MR. STOKAMER: Your Honor, my problem with that is the following:

Mr. Figueroa, before the rebuttal, I think saw the problem and raised it.

Your charge, most respectfully, will

be tomorrow.

Now, that type of thing I think should have been straightened out to the jury immediately. There is no way that your Honor can straighten out anything today.

THE COURT: I think it can be straightened -- I think anything can be straightened out a lot better tomorrow than it could have been at 6:30 this evening.

MR. STOKAMER: Well, the jury got out at 6.

THE COURT: All right, 6 o'clock.

They were listening to people talking since 10 o'clock this morning, and anything said to them at 6 o'clock or 6:15, when they expected to go home, would have been lost. It can be handled a lot better tomorrow.

MR. STOKAMER: It is my contention that the best time to cure the defect was right then and there when they would have listened to your Honor. I have no reason to believe that they wouldn't have.

The same with the vouching for himself. I think the fact that tomorrow, during your Honor's charge, and having the night to digest it and thought over the improper things that Mr. Moss has said, would not cure the defect, certainly not as well as it could have or may have had it been cured immediately.

Things have a way of having a cumulative effect on the jury, and the impact, I submit, is lost.

I would also add to that that my objections -- I also have objection to Mr. Moss misstating questions that I had asked. I never asked him what the day of the week was; I asked him whether it was a weekday or not a weekday. In any event, that was only one in a long series of questions. And I think a curative instruction tomorrow will be meaningless. Perhaps a curative instruction at the time that the remark was made, were your Honor to have allowed an objection, might have done the job, certainly in that particular case.

But I think that curative instructions tomorrow, together with many other instructions and general instructions, would not cure any misstatements that may have been made.

I therefore object not only to what Mr. Moss said, but I submit the curative instructions in the future would not cure any mistakes that were made and I think that your Honor's procedure with respect to the rebuttal therefore was prejudicial to the point where, in my view, there is no remedy, there is no cure.

I also object to Mr. Moss' statements concerning other defendants pled guilty, inferring that there is something wrong with the people who didn't plead guilty. His remarks were inappropriate in that regard and I object to those as well.

Thank you, your Honor.

MR. BRODERICK: Your Honor, if I can come out of order for just a moment, because I have to add something to what I said before, if I will be permitted to do so by the court.

Your Honor, again on the same issue of Mr. Moss' reputation and presenting it in that way to the jury, you will also recall that when he stated in his rebuttal, when he described the alleged statement made by my client, first of all, just the way he described it -- and I think this is an offshoot of what we were just saying -- obviously we are testifying, because it was his office and he took the statement.

Secondly, he brought out that there was an interpreter -- he stated this -- there was an interpreter right outside the door. This was never brought out during the course of the trial.

So not only has he put his reputation on the line explicitly, but I suggest he has also done it impliedly by describing the circumstances -- first of all, he quoted something not even in evidence, but by his personally describing the circumstances under which the statement was taken he is impliedly putting his reputation before the jury.

I ask your Honor to consider that additional fact in your consideration of the motion for a mistrial.

MR. MENDES: Your Honor, I would also like to have on the record my objection to Mr. Moss' statement to the effect that Raymond Rivera would have to live the rest of his life looking over his shoulders because of a Witness Protection Program.

We have been avoiding --

THE COURT: That has already been covered, Mr. Mendes.

MR. MENDES: Yes --

TH COURT: We discussed that a half hour ago.

MR. MENDES: Yes. But we didn't mention the fact that when he referred, it was referred when we discussed the Witness Protection Program, but he said he would have to be looking over his shoulder all his life.

THE COURT: Mr. Mitchell?

MR. MITCHELL: Your Honor, I join in the motions made simply because I don't want to be the only one that didn't join in. But I have an additional point.

Mr. Moss -- and this is not for a mistrial, your Honor -- Mr. Moss stated that Exhibit 6, which is the list prepared by Cruz, containing the name Gil and others, rebuts the mistake that I contended Cruz made in using the month of February.

The month of February came out in grand jury testimony after this had been seized, as I recall, by the end of January of 1975, and after he is being debriefed and after he testifies before a grand jury in December, after that he still uses February as the month that it occurred.

So when he says he rebuts it, I don't think he is correct, your Honor. I don't think it is even an argument that should be made to the jury.

THE COURT: Thank you.

MR. LINN: Your Honor, I have a similar problem as Mr. Stokamer in that if I were interested I could or should -- I'm not sure of his exact words --

go to California and got the hotel records and get witnesses as to Mr. Rivera.

Again, I am not obliged as the defendant to get witnesses, and I don't think Mr. Moss should comment to the jury or instruct the jury in any way that I should go and get witnesses or I could go and get witnesses.

The defendant does not have to say anything in a criminal case, and Mr. Moss saying that to the jury is very prejudicial to my entire case, and I think the jury is now stuck with it overnight, and I would hope that your Honor could make curative instructions but I question it highly and I would like to move for a mistrial on that ground.

THE COURT: All right. That motion is denied.

Mr. Cunniffe.

MR.CUNNIFFE: Merely, your Honor, to join in all motions made by my co-counsel, especially Mr. Linn's last motion since I raised a similar argument on my summation.

THE COURT: Mr. Moss, I will hear from you.

Mr. Landau --

MR. LANDAU: I had something to raise, but I was waiting for them to get done.

THE COURT: I think they are all done.

MR. LANDAU: Your Honor, I agree with everything co-counsel has said and in my summation I just skipped over a lot because they said it already.

There are one or two points.

First of all, with reference to what Mr. Moss said that I was saying to the jury, that because he mentioned $145,000, I wanted them to believe he lied.

I did not say that at all.

Probably more important, and I go back to my argument before only in reference, the fact that Mr. Moss is the government prosecutor, the government representative, during his rebuttal summation he said with reference to the fact that these people have not been brought up on charges for perjury or the Internal Revenue Service, he said, "The government has -- do you think that the government has nothing better to do but to reprosecute these people for perjury and Internal Revenue Service and so forth?"

Again, Mr. Moss is using that aura of the prosecutor's office to tell this jury things that should not be put forth to them.

They weren't prosecuted and that's it. It is not for him to say that the government has nothing better to do than prosecute or reprosecute them for things like that.

I think that throughout his summation, as was pointed out by these other attorneys, when he injected things, he was injecting them not just as an attorney, not just in rebuttal or summation, but as the government, which bears that extra aura, that extra special thing.

So when he is saying, "We have got nothing better to do than to prosecute them for Internal Revenue or for perjury," he is telling them something that is not accurate.

Everything else has been covered, your Honor.

MR. BRODERICK: Your Honor, very quickly, only a couple of sentences.

Mr. Moss stated to the jury concerning Rivera's misidentification of Orlando Machado, he stated to the jury, he indicated to them that the government had stipulated concerning this misidentification.

As I recall -- it's a murky area; I'm not sure there was any stipulation from the government. I do know, I think your Honor took the tack there was an argument about the stipulation, your Honor said, "I will instruct the jury," which of course you did.

THE COURT: And I delivered the stipulation to the jury.

My recollection is that the reason why I did it was that it would be taken by the jury as not coming from you, not coming from Mr. Moss, but coming from the court, that was not in the fray, and it would make it clear to the jury that this was it.

MR. BRODERICK: Your Honor, isn't it true, also, that I was not going to enter into a stipulation? Do I remember my position correctly?

THE COURT: I think that is true, Mr. Broderick, you did not enter into a stipulation simply because you were concerned that entering a stipulation might surrender some rights you might have with respect to motions you had made.

But for all practical purposes, the purpose of my instructing the jury was to deliver what would have been a stipulation, if you had entered into it, and otherwise was a concession by the government.

MR. BRODERICK: Your Honor, I hate to

take up the time --

THE COURT: But it certainly was not a matter of Judge Broderick stepping into this fray and discerning the truth and straightening the jury out, which was sort of the flavor I got from your summation.

MR. BRODERICK: It's a fair comment, your Honor.

Your Honor, what I was concerned about there -- your Honor, if I can just have a second.

(Pause.)

MR. BRODERICK: I am sorry, it slips my mind.

THE COURT: Mr. Moss.

MR. MOSS: The only point I want to respond to again is the suggestion that by responding to the argument or the suggestion that the government may somehow have fed the names of defendants to these witnesses, that I was vouching for the credibility of those witnesses, and I was certainly not doing that.

THE COURT: It does seem to me it came across to some extent that you were doing just that.

MR. MOSS: I left it to the jury, "If you think that I did that, acquit," and I did not follow up and say, "If you think I didn't do that, then you must convict."

Then I went on to proceed to continue to evaluate the credibility of the witness.

THE COURT: There was a question about jeopardizing of reputations, which it seems to me -- I don't recall whether you included yourself in those whose representations might be jeopardized, but if it wasn't -- if you did not include yourself it was still putting the whole credibility of the United States Government behind these witnesses.

MR. MOSS: I did include myself, but what I was putting the credibility of the government behind, if I was doing that at all, was the fact that the government agents had not fed the names of defendants to witnesses who are otherwise had no knowledge of those defendants' names, and that was it, pure and simple.

I was not suggesting that when the defendants came forth with those names, that they were otherwise in all respects completely telling the truth, because I continued to argue the factors by which the jury could assess their credibility in that regard.

THE COURT: I will deny the motion for a mistrial or the various motions for a mistrial, and

I shall give a corrective instruction to the jury, which I would have given in any event, but I shall move it up in place so that it is fresh in the minds of the jury when I start to give my charge tomorrow with respect to the whole role of attorneys in this litigation process and the role of summation and the role of the jury and the role of the judge.

It is my judgment that this will adequately deal with whatever concerns defense counsel have.

We will adjourn until 10 o'clock tomorrow.

MR. CUNNIFFE: Your Honor, may I assume from our earlier colloquy that you are going to give an instruction on the alibi?

THE COURT: Yes, sir.

(Adjourned to June 29, 1977, at 10:00 a.m.)

M:jp
15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

UNITED STATES OF AMERICA, :

- v - : 77 Cr. 100 (VLB)

FERNANDO GALLARDO, a/k/a :
"Frank Zayas", et al.,
:
Defendants.
:
- -x

GOVERNMENT'S SENTENCING MEMORANDUM

The Government respectfully submits this memorandum in connection with the sentencing of the defendants in the above-captioned case who were convicted after trial in this action. These defendants are: Domingo Zayas, a/k/a "Luis Nunez", a/k/a "Luis Machado", a/k/a "Luisito", Orlando Machado, a/k/a "Julito", Luis Nunez Ramos, a/k/a "Indio", Carlos Rivera Santiago, a/k/a "Carlitos", Angelo Roche, a/k/a "The Old Man", Jose Velasquez, a/k/a "Vaquero", a/k/a "Cowboy", Fabian Rodriguez, Antonio Morales, a/k/a "Tony the Mechanic", and Anthony Rodriguez, a/k/a "Little Tony."

This memorandum contains a compilation of sentences in previous multiple-defendant narcotics trials or in other narcotic cases involving substantial violations of the narcotics laws.* Following this compilation are specific and general comments regarding matters pertinent to the sentencing of these defendants.

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* Since there is no handy index of prior sentences, the following information has been compiled whenever possible from Government briefs on appeal.

JAM:ow
G-15

I. SENTENCES IN PRIOR CASES

The following sentences have been imposed upon defendants following recent multi-defendant narcotics trials.

	CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
1.	United States v. Luis Ortega, 471 F.2d 1350 (1972) (Judge Pierce)	A. Ortega	1: 10 yrs. + $10,000	Consecutive terms on each count	A. 25 years
			2: 15 yrs. + $25,000		
		B. Orsini	1: 10 yrs. + $10,000	Consecutive terms	B. 25 years
			2: 15 yrs. + $25,000		
		C. Perez	1: 7 yrs. + $7,000	Concurrent terms	C. 7 years
			2: 7 yrs. + $7,000		
2.	United States v. Barrera, 486 F.2d 333 (1973) (Judge Pierce)	A. Barrera	1: 15 yrs.	Consecutive	A. 25 years
			2: 10 yrs. + $50,000		
		B. Bornstein	1: 15 yrs.	Consecutive	B. 25 years
			2: 10 yrs. + $50,000		
		C. Enriquez	1: 6 yrs.	Consecutive	C. 12 years
			2: 6 yrs.		
		D. Sadoun	1: 15 yrs.	Consecutive	D. 25 years
			2: 10 yrs.		
		E. DeLuca	1: Maximum term under 18 USC 4208(b)	Defendant was committed	
			2: + psychiatric study		

I:cw
5

	CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
3.	United States v. Manfredi, 488 F.2d 588 (1973) (Judge Tyler)	A. Manfredi	1: 30 yrs. + $25,000	Second Offender	A. 30 years
		B. La Casa, F.	1: 10 yrs. + $15,000		B. 10 years
		C. La Cosa, J.	1: 15 yrs.	Concurrent	C. 30 years
			2: 30 yrs. + $100,000 (for violation of § 848)		
			3: 15 yrs.		
		D. Yanni	1: 8 yrs.		D. 8 years
		E. Cassavella	1: 6 yrs.		E. 6 years
		F. Colangelo	1: 10 yrs.		F. 10 years
		G. Mayo	1: 9 yrs.		G. 9 years
		H. Schrader	1: 7 yrs.		H. 7 years
.	United States v. Zanfardino, 493 F.2d 1399 (1974) (Judge)	A. Zanfardino	1: 25 yrs.	Special parole of 10 yrs.	A. 25 years
		B. Campapiana	1: 20 yrs.	Each concurrent, but consecutive with prior 5 yr. term and consecutive to prior 15 yr. term	B. 20 years
			2: 20 yrs.		
			5: 20 yrs.		
			6: 20 yrs.		
		C. Boria	1: 6 yrs.	Concurrent	C. 6 years
			4: 6 yrs.		

JAM:ow
G-15

	CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
5.	United States v. Raul Ortega-Alvarez, 500 F.2d 455 (1974) (Judge Metzner)	A. Raul Ortega	1: 12 yrs.	Concurrent	A. 12 years
			2: 12 yrs.		
			3: 12 yrs.		
		B. Calana	1: 6 yrs.	Concurrent	B. 6 years
			2: 6 yrs.		
		C. Infiesta	1: 8 yrs.	Concurrent	C. 8 years
			3: 8 yrs.		
		D. Alvarez	1: 8 yrs.	Concurrent	D. 8 years
			2: 8 yrs.		
		E. Figueroa	1: 8 yrs.	Concurrent, but consecutive to current 5 yr. sentence	E. 8 years
			11: 8 yrs.		
		F. Del Cristo	1: 10 yrs.	Concurrent	F. 10 years
		G. Cifre	1: 10 yrs.		G. 10 years
6.	United States v. Capra, 501 F.2d 267 (1974) (Judge Frankel)	A. Capra and B. Guarino	1: 15 yrs. + $25,000	Concurrent (1,2,3,5) w/4 consecutive	A. and B. 18 years*
			2: 15 yrs. + $20,000		
			3: 15 yrs.		
			4: 3 yrs.		
			5: 15 yrs.		

:cw
5

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	C. Dellacava	1-5: 15 yrs.	Concurrent; 6 yr. special parole	C. 15 years**
	D. Jermain	1-5: 12 yrs. each	Concurrent; 6 yr. special parole	D. 12 years
	E. Morris	1: 8 yrs.	Concurrent w/5 yr. sentence	E. 8 years
	F. Harris	1: 13 yrs.	Concurrent w/9 yr. snetence; 5 yr. special parole	F. 13 years

subsequently reduced to 14 years.
* Subsequently reduced to 12 years.

United States v. Sperling, 506 F.2d 1323 (1974) (Judge Pollack)	A. Sperling	30 yrs. + $200,000 (Counts 1, 8, 9, 10) Life + $100,000 (848 count)	Concurrent; 6 yr. special parole	A. Life
	B. Goldstein	8 yrs. + $25,000		B. 8 years
	C. Bless	10 yrs. + $25,000 (Counts 1,4,5,6)	Concurrent	C. 10 years
	D. Serrano, J.	12 yrs. + $50,000 (Counts 3, 7,10)	Concurrent	D. 12 years
	E. Valentine	11: 12 yrs. + $50,000	6 yrs. special parole	E. 12 years
	F. Bassi, Jr.	1: 12 yrs. + $50,000	6 yrs. special parole	F. 12 years
	G. Berger	1: 3 yrs. + $10,000		G. 3 years
	H. Serrano, F.	5 yrs. + $5,000 (Counts 1&3)	Concurrent; 6 yrs. parole	H. 5 years

JAM:cw
G-15

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	I. DalBusto	5 yrs. + $10,000 (Counts 1&11)	Concurrent	I. 5 years
	J. Garcia	10 yrs. + $25,000 (Counts 1&11)	Concurrent; 6 yrs. parole	J. 10 years
	K. Schworak	1: 8 yrs. + $10,000		K. 8 years
8. United States v. Mallah, 503 F.2d 971 (1974) (Judge Pollack)	A. Mallah	1: 10 yrs. + $25,000		A. 10 years
	B. Catino	1: 12 yrs. + $25,000 2: 12 yrs.	Concurrent; 6 yrs. special parole	B. 12 years
	C. Barrett	1: 5 yrs. + $10,000		C. 5 years
	D. Pacelli	1,2&6: 15 yrs. + $75,000 + ct. costs	Concurrent, to run consecutive w/20 yrs. current term	D. 15 years
9. United States v. Tramunti, 513 F.2d 1087 (Judge Duffy)	A. Tramunti	1: 15 yrs.	Consecutive to a previous sentence	A. 15 years
	B. Inglese	1-8, 12-14: 20 yrs. 23,24,28: 15 yrs.	Terms to run concurrently, except sentence on Count 1 to run consecutive to other counts. All this consecutive to prior sentence.	B. 35 years
	C. Christiano	1,11-13: 10 yrs.	Concurrent	C. 10 years
	D. Mamone	1: 10 yrs.		D. 10 years
	E. DiNapoli	1: 15 yrs. 2: 5 yrs.	Consecutive; entire term concurrent w/ previous term	E. 20 years

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	F. Pugliese	1: 10 yrs.		F. 10 years
	G. Ceriale	1: 3 yrs.		G. 3 years
	H. Gamba	1: 8 yrs.		H. 8 years
	I. D'Amico	1: 5 yrs.		I. 5 years
	J. Russo	1: 6 yrs.		J. 6 years
	K. Robinson	1: 3 yrs.		K. 3 years
	L. Alonzo	1: 8 yrs.		L. 8 years
	M. Ware	1: 5 yrs.	Suspended; 5 yrs. probation	M. 5 years probation
	N. Springer	1: 15 yrs.		N. 15 years
	O. Salley	1: 5 yrs.		O. 5 years
10. United States v. Stassi, 75 Cr. 502 (Judge Knapp)	A. Joseph Stassi	1,2,3: 30 yrs. + $20,000 4: 15 yrs. + $50,000 5: 15 yrs. + $50,000 6: 6 yrs. special parole	Counts 4 and 5 served consecutive to each other, concurrent with counts 1-3.	A. 30 years + $120,000
	B. Anthony Stassi	1,2,3: 20 yrs. + $20,000 4: 5 yrs. + $25,000 5: 5 yrs. + $25,000	Counts 4 and 5 concurrent to each other but consecutive to 1-3.	B. 25 years + $70,000

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	C. William Sorenson	1,2,3: 20 yrs. 4: 5 yrs. 5: 5 yrs. + 20 yrs. special parole	Counts 4 and 5 concurrent with each other but consecutive to Counts 1-3.	C. 25 years
11. United States v. Magnano, 75 Cr. 687 (Judge Cooper)	A. Magnano and B. Pallata	1: 15 yrs. 2: 15 yrs. 3: 15 yrs. 4: 15 yrs.	1&2 consecutive; 3&4 concurrent w/1&2	A and B: 30 years
	C. Bollela	1: 10 yrs. 4: 10 yrs.	Consecutive	C. 20 years
	D. DeLutro	1: 25 yrs. 8: 25 yrs.	Concurrent; 6 yr. special parole (2nd offense)	D. 25 years
	E. Soldano	1: 15 yrs. 9: 15 yrs.	Concurrent	E. 15 years
	F. Gwynn	1: 8 yrs. 10: 8 yrs. 16: 8 yrs.	Concurrent	F. 8 years
	G. Lucas	1: 20 yrs. + $50,000 5: 20 yrs. + $50,000 6: 20 yrs. + $50,000 &; 20 yrs. + $50,000	7,1+5 (concurrent) to run consecutive w/6+7 (concurrent)(2nd offense; 6 yrs. special parole	G. 40 years + $200,000

JAM:cw
G-15

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
12. United States v. Anthony Rico, 75 Cr. 411 (Judge Lasker)	A. Angelo Rico	5 yrs.		A. 5 years
	B. Indiviglia	5 yrs.		B. 5 years
	C. Rizziery	5 yrs.		C. 5 years
	D. DeSalvo	3 yrs.		D. 3 years
	E. Corrardo	3 yrs.		E. 3 years
	F. Blase	Probation		F. Probation
13. United States v. Al Taylor, 75 Cr. 1112 (Judge Duffy)	A. Taylor	1: 8 yrs. + 6 yrs. special parole		A. 8 years
	B. Turner	1: 15 yrs. + 6 yrs. special parole	Concurrent with 10 yrs. tax evasion sentence	B. 15 years
	C. Ramsey	1: 15 yrs.		C. 15 years
	D. Wesley	1,5: 8 yrs.	Concurrent	D. 8 years
	E. Green	1,8: 8 yrs.	Concurrent	E. 8 years
	F. Salley	1: 5 yrs.		F. 5 years
4. United States v. Armedo-Sarmiento, 75 Cr. 429 (Judge Cannella)	A. Armedo-Sarmiento	1: 15 yrs. + $25,000 + 5 yrs. special parole		A. 15 years
	B. Velez	1: 5 yrs. + $5,000		B. 5 years
	C. Carmen Gill	1: 10 yrs. + $20,000 + 5 yrs. special parole		C. 10 years
	D. Librado Gill	1: 10 yrs. + $20,000 + 5 yrs. parole		D. 10 years

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	E. Restrepo-Zotaro	1: 10 yrs. + $20,000 + 5 yrs. special parole		E. 10 years
	F. Ruben Holan	1: 7 yrs. + $5,000		F. 7 years
	G. Gonzalez	1: 7 yrs.		G. 7 years
	H. Rodriguez-Parra	1: 10 yrs. + 6 yrs. special parole		H. 10 years
	I. Montes-Gomez	1: 10 yrs. + 6 yrs. special parole		I. 10 years
15. United States v. Rev. Alberto Majias, 76 Cr. 164 (Judge Carter)	A. Majias	1: 15 yrs. (534 days suspended)*	1. Count 4 consecutive to Count 1	A. 13 years
		4: 534 days		
	B. Maria Navas	1: 15 yrs. (503 days suspended)*	2. Count 2 consecutive to 1,3.	B. 15 years
		2: 503 days		
		3: 15 yrs.		
	C. Estella Navas	1: 15 yrs. (503 days suspended)*	3. Concurrent	C. 15 years
		3: 15 yrs.		
	D. Rojas	1,5: 15 yrs. (534 days suspended)*	4. Concurrent	D. 15 years less 534 days

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	E. Rivera	1: 15 yrs. (534 days suspended)*		E. 15 years less 534 days
	F. Padilla	1: 15 yrs. (534 days suspended)*		F. 15 years less 534 days
	G. Salazar	1: 15 yrs.		G. 15 years
16. United States v. Madonna, 76 Cr. 846 (Judge Carter)	A. Madonna	1: 15 yrs.	Consecutive	A. 30 years
		2: 15 yrs.		
	B. Larca	1: 15 yrs.	Concurrent	B. 15 years
		2: 15 yrs.		
	C. Klinger	1: 6 months		C. 6 months
17. United States v. Valles, 75 Cr. 1177 (Judge Frankel)	A. Miguel Valles	1: 7 yrs.		A. 7 years
	B. Enrique Valles	1: Young Adult Offender		B.
	C. Tomas Valles	1: 6 yrs.		C. 6 years
	D. Marcelino	1: 7.5 yrs.		D. 7.5 years
	E. Lopez	1: 3 yrs.		E. 3 years
	F. Garcia	1: 7 yrs. + $5,000		F. 7 years
	G. Bonilla	1: 3.5 yrs.		G. 3.5 years

* Days suspended represent time served in state institution.

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G-15

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
18. United States v. Moten, et al., 76 Cr. 324 (Judge Owen)	A. Moten	1: 15 yrs.		A. 25 years + $50,000
		2: 15 yrs. + $25,000	Counts 1&2 (concurrent) to run consecutive to Count 3	
		3: 20 yrs. + $25,000		
	B. Rodriguez	1: 15 yrs.	Concurrent	B. 15 years + $50,000
		2: 15 yrs. + $25,000		
		3: 15 yrs. + $25,000		
		4: 15 yrs		
		5: 15 yrs.		
	C. Intersimone	1: 15 yrs. + $25,000	Concurrent	C. 15 years + $25,000
		2: 15 yrs.		
	D. Hightower	1: 12 yrs.	Concurrent	D. 12 years
		2: 12 yrs.		
		3: 12 yrs.		
		4: 12 yrs.		
	E. Foster	1: 10 yrs.		E. 10 years
	F. Joseph Sampson	1: 10 yrs.	Concurrent	F. 10 years
		2: 10 yrs.		
	G. Lois Sampson	1: 12 yrs.	Concurrent	G. 12 years
		2: 12 yrs.		
		3: 12 yrs.		
		4: 12 yrs.		

IAM:jp
G-15

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	H. Schennault	1: 5 yrs. + $20,000	Consecutive	H. 20 years + $45,000
		2: 15 yrs. + $25,000		
	I. Wilson	1: 8 yrs.	Concurrent	I. 8 years
		2: 8 yrs.		
	J. Laws	1: 10 yrs.	Concurrent	J. 10 years
		2: 10 yrs.		
	K. Davis	1: 2 yrs.	Concurrent	K. 2 years
		2: 2 yrs.		
		3: 2 yrs.		
	L. Morris	1: 10 yrs.		L. 10 years
	M. Mitchell	1: 12 yrs.	Concurrent	M. 12 years
		2: 12 yrs.		
	N. Bonilla	1: 5 yrs.	Concurrent	N. 5 years
		2: 5 yrs.		
	O. Cowpers	1: 12 yrs.	Concurrent	O. 12 years
		2: 12 yrs.		
9. United States v. Codell Griffin and Willie J. Griffin, 76 Cr. 938 (Judge Knapp)	A. Codell Griffin	1: 15 yrs.	Concurrent; 5 yrs. special parole	A. 15 years
		2: 15 yrs.		
		3: 15 yrs.		
		4: 15 yrs.		
	B. Willie J. Griffin	1: 7.5 yrs.	Concurrent	B. 7.5 years
		2: 7.5 yrs.		

JAM:jp
G-15

CASE	DEFENDANT	SENTENCE PER COUNT	COMMENTS	TOTAL
	C. Irery	1&2: Youth Corrections Act [18 USC 5010(b)]	Concurrent	
20. United States v. Moreno, et al., 77 Cr. 102 (Judge Duffy)	A. Moreno	1: 15 yrs. 2: 15 yrs.	Consecutive	A. 30 years
	B. Gomez	1: 15 yrs. 2: 15 yrs.	Concurrent; to run consecutive to current term of 15 yrs.	B. 15 years
	C. Arroyo	1: 15 yrs. 2: 15 yrs.	Concurrent	C. 15 years
	D. Rayo	1: 7 yrs. 2: 7 yrs.	Concurrent	D. 7 years

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G-15

II. COMMENTS REGARDING INDIVIDUAL DEFENDANTS

The Government respectfully submits the following comments as to defendants Angelo Roche, a/k/a "The Old Man", and Jose Velasquez, a/k/a "Vaquero", a/k/a "Cowboy". These comments are intended to bring to the Court's attention information which may be relevant to its determination of sentence, but which was not brought to the Court's attention during the trial of this action.

A. Angelo Roche, a/k/a "The Old Man"

Between December 23, 1976 and February 8, 1977, two undercover police detectives assigned to the New York Drug Enforcement Task Force participated in five heroin transactions in New York City and Chicago with associates of Angelo Roche, a/k/a "The Old Man". The heroin transaction on these five occasions ranged in quantity from one-half ounce to two-and-one-half kilograms.

During negotiations carried out in the course of this investigation, the undercover agents learned that the subjects of the investigation were part of a network of distributors who received bulk quantities of Mexican heroin from a source in Chicago. On January 8, 1977, one of the agents was told by conspirator Juan Ramon Vasquez that the Chicago source could supply any amount of heroin desired.

When asked whether buying in large quantities from Chicago would cause any problems with New York people, Vasquez stated that the "Old Man" (meaning Angelo Roche) ran everything in New York and that his approval was needed.

During negotiations for the fifth transaction, Vasquez was twice asked whether the deal would cause trouble with Roche. On the first occasion Vasquez said there would be no problem; on the second occasion Vasquez replied that the deal had Roche's blessing.

On February 5, 1977, the undercover agents flew to Chicago with Vasquez and conspirator Aurea Vasquez-Montalvo to complete the fifth transaction. Vasquez-Montalvo told the agents that she had made many trips to Chicago to buy heroin -- some alone and some with Roche. In Chicago the agents were taken to the home of conspirator Enriquetta Colon, the former wife of Roche. The agents were told that the Chicago conspirators trusted Colon because she had been married to Roche and that Roche transacts most of his Chicago heroin business at Colon's house.

Each of the seven defendants arrested in connection with this investigation was convicted in April 1977 in the Southern District of New York of violating the federal narcotics laws. Each has been sentenced by Honorable Lawrence W. Pierce.

The evidence uncovered during this investigation demonstrates that Roche did not terminate his involvement with narcotics in November 1975, when the Valenquela-Gallardo connection was disrupted. Quite obviously, Roche has established for himself a direct connection for Mexican heroin in Chicago. Moreover, his operation in New York City has grown to such proportions that he has direct or indirect control over much of the heroin that is shipped into the city from Chicago.

B. Jose Velasquez, a/k/a "Vaquero", a/k/a "Cowboy"

At approximately 3:30 p.m. on January 25, 1977, the defendant Jose Velasquez, a/k/a "Vaquero", a/k/a "Cowboy" met Police Officer Julio Mercado, an undercover agent of the New York Drug Enforcement Task Force, in a restaurant at 107 Avenue D, New York, New York. In the course of this meeting, Velasquez agreed to sell five ounces of brown heroin to Police Officer Mercado for $6,900. After receiving and counting the $6,900, Velasquez directed Officer Mercado to follow another individual who, upon leaving the restaurant, produced a brown paper bag containing five one-ounce packages of brown heroin. Officer Mercado then reentered the restaurant and spoke again with Velasquez, who promised to supply Mercado with whatever heroin he needed in the future.

This transaction, having taken place at a time when criminal charges were pending against Velasquez in the New York State courts, underscores that which was evident from the testimony of the Government's witnesses at the instant trial: Velasquez's participation in an active and substantial heroin business is undeterred and unaffected by his arrest and prosectuion for similar activities. Quite obviously, Velasquez feels no remorse for his prior dealings in narcotics; nor has the possibility of conviction and incarceration caused him to reconsider his continued narcotics involvement.

III. GENERAL COMMENTS

The evidence presented at trial established that each of the convicted defendants was involved in the sale of narcotic drugs on a tremendous scale. These defendants were not persons involved in isolated transactions; instead they were employed in the full-time business of selling drugs.

For the most part, the convicted defendants display a degree of continuous criminality and imperviousness to rehabilitation that is particularly noteworthy. The record shows that each of these defendants has been involved in the sale of heroin for substantial periods of time. These defendants' past history demonstrates that brief periods of

JAM:er
G-15

incarceration serve no rehabilitative purpose, and only allow the defendant to resume inflicting injury upon the public after only the briefest interruption. The evidence showed that on more than one occasion a defendant, immediately upon release from incarceration sought to rebuild his narcotics operation with scarcely a second throught.

The fact remains that in view of the enormous profits available to narcotic dealers -- profits bountifully earned by the wholesale-distributor defendants in this case -- relatively short sentences of incarceration are perceived as a minimal cost of doing business. Drug merchants know that a court sentence of even 10 years means a maximum period of incarceration of 6 years and 9 months, because of mandatory good time awards, and more often means a sentence of 3 years and 4 months, because of parole eligibility after one-third of the sentence has run. Where a defendant is selling eighth-kilogram quantities of heroin on a weekly basis, profits, after cutting, may run into many thousands of dollars, a reward that potential narcotics dealers may find justifies the risk. It is for this reason that, in a case like this, the Government believes the tendency to view "customer" defendants as of lesser significance should be overcome and that each defendant should be viewed as playing the role he does in reality -- as a customer for one link, and a source of supply for another.

The Government believes the sentences imposed in this case should serve the public interest in both general and individual deterrence. The distribution of narcotics such as heroin on the scale involved in this case, cannot be regarded as anything but a massive assault upon the public's rights, as acts of personal violence, in total disregard of the welfare of the community. And while no portion of the community is spared the effects of heroin traffic, it is the tragic fact that the evil effects of this poisonous trade are felt most deeply in the black and hispanic communicities of the City. It is only in courts like this, at the time of sentence, that the interests of the public can be protected.

Finally, none of these convicted defendants has agreed to cooperate with the Government. The importance of such cooperation cannot be overestimated. The ordinary practice in the narcotics trade is for each seller to avail himself of several suppliers and several customers. Accordingly, each defendant is at the center of organizations of narcotics distribution which continue to function and distribute narcotics at this very time. The ongoing narcotics activities of Angelo Roche, a/k/a "The Old Man" and Jose Velasquez, a/k/a "Vaquero", a/k/a "Cowboy", outlined above illustrate just this fact.

Thus, it is clear the enforcement officials could make a significant dent in the narcotics traffic in New York City, Chicago and, perhaps, other cities based upon the cooperation of these defendants. The validity of conspiracy cases built upon accomplice testimony has been established by past cases and validated by this one. The failure to cooperate heretofore of these defendants represents, therefore, another example of their fundamental criminal character and a total unwillingness to attempt to right the years of wrongdoing they have committed.

It is well established that in imposing sentence the Court may consider a defendant's cooperation or lack thereof. United States v. Sweig, 454 F.2d 181 (2d Cir. 1972); United States v. Vermeulen, 436 F.2d 72 (2d Cir. 1970). Since a defendant who believes he will not be required to face a substantial period of incarceration may be unwilling to come forward with information about the full nature of his narcotic activity, sentences in a narcotics case of this type should particularly reflect the full extent of the defendant's criminality.

It was for these reasons that the Congress provided large maximum sentences for heroin offenses, and for consecutive sentences where a defendant is convicted on more than one count. Although maximum sentences are not always imposed, it is only on relatively few occasions that district courts have before them narcotics violators who have been proven to be part of a narcotics operation of the significance of that before the Court in this case. It is repectfully submitted that when Congress gave district courts the full sentencing authority they have in narcotics cases, it had in mind violators of the kind and quality of those in this case.

Respectfully submitted,

ROBERT B. FISKE, JR.
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Southern District of New York
Attorney for the United States
of America

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RICHARD F. ZEIGLER
Assitant United States Attorneys

- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v - 77 CR 100 (VLB)

FERNANDO GALLARDO, et al,

Defendants.

REQUESTS TO CHARGE

The defendant, ANTHONY RODRIGUEZ, respectfully requests the Court to include the following in its charge to the Jury.

ALTERNATIVE REQUEST TO CHARGE NO. 1

SPECIFIC INTENT

(Requested as to Counts 1 and 27)

Specific intent, as the term itself suggests, requires more than a mere general intent to engage in certain conduct.

A person who knowingly does an act which the law forbids, or knowingly fails to do an act which the law requires, purposely intending to violate the law, may be found to act with specific intent.

From DEVITT and BLACKMAR, Federal Jury Practice
and Instsuctions, Vol. I, Sec. 13.03.

REQUEST TO CHARGE NO. 1

SPECIFIC INTENT

(Requested as to Counts 1 and 27)

The crime charged in this case is a serious crime which requires proof of specific intent before the defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

From DEVITT and BLACKMAR, Federal Jury Practice
and Instructions, Vol. I, Sec. 1403.

REQUEST TO CHARGE NO. 2

KNOWINGLY

An act is "knowingly" done, if done voluntarily and intentionally, and not because of some innocent reason, such as mistake or accident. In this regard you may also consider defendant's claimed heroin addiction in determining whether he acted knowingly at the time in question.

REQUEST TO CHARGE NO. 1A
(To Follow Charge on Specific Intent)

In your consideration of defendant RODRIGUEZ's state of mind during the alleged commission of the crimes charged, you may consider the evidence concerning his heroin addiction during the period of the offense as bearing on his capacity to formulate the required specific intent.

In this regard, if you find that there is sufficient evidence before you that might create a reasonable doubt as to whether defendant RODRIGUEZ was sober enough, or sufficiently in possession of his faculties to be capable of forming the specific intent to commit such crime, then you must acquit.

From:
United States v. Clark, 498 F 2d 535 (2d Cir. 1974)
United States v. Bishop, 469 F 2d 1337 (1st Cir. 1972)
Allen v. United States, 239 F 2d 172 (6th Cir. 1956)
CF United States v. Steinberg, 525 F 2d 1126, 1132,
(2d Cir. 1975)
See, United States v. Williams, 332 F. Supp. 1

Respectfully submitted,

NICHOLAS FIGUEROA
Attorney for Defendant
Anthony Rodriguez

to your Honor's intentions with respect to the charge? It is quarter after 11 now.

THE COURT: I plan to begin the charge right now. The jury has been waiting for an hour and a quarter.

MR. LANDAU: May we have five minutes before we sit down for many hours?

THE COURT: I will begin the charge in five minutes.

(Recess)

(Jury in box.)

THE COURT: Good morning, ladies and gentlemen.

If you don't hear me, let me know, and I will speak louder. I told you the other day that there is a rhythm to jury trials, and that at some point at the end of the trial the focus turns over to the jury. You have seen some sign of that in the last two days, when the attorneys for the government and the defense have summed up to you. Now my function is to charge you on the law, to instruct you on the law that is applicable to the case. When I have finished instructing you, the case will be given to you for judgment.

I have a couple of preliminary matters I want to discuss before we get into my complete charge. One had to do with the functions of the various people in the courtroom.

The attorneys have a special function. It is their job to present evidence before the jury in an orderly manner; my function is to rule on the law; your function is to decide the facts.

Now, yesterday and the day before yesterday the attorneys for the defendants and the attorney for the government summed up before you, and they interpreted the facts and made various contentions before you with respect to those facts. I have given instructions in this trial that there are to be no interruptions before the jury, and there were no interruptions; any discussions on matters of law took place at the side bar. The reason for this is that the jury is concerned with the evidence which is properly before it, and not with anything else.

The attorneys yesterday made various arguments to you and they interpreted the evidence. They recalled the evidence to you and they suggested to you various interpretations you should put on that evidence.

It is very important for every one of you to remember that you are the judges of the facts; the attorneys are not. Their recollection of the facts is just not controlling on you. There were a whole series of witnesses who testified on the stand before you, and it is your recollection of what they testified to which controls here, not that of any attorney. The attorneys are not participants in the real issues here. The attorneys' roles are professional roles. There is no attorney in this case that has a stake in the outcome. Their job is in a professional manner to make sure that the evidence which is favorable to their client reaches the jury, and their job in summation is to suggest interpretations of that evidence to you which is favorable to their clients, in the case of each defense counsel, favorable to his particular client, in the case of the government attorney, favorable to the government. But the recollection of what the testimony is has to be your recollection, not the attorneys' and not mine.

My job is to instruct you on the law. I may in the course of this charge talk about some of the evidence in this case, but it is your recollection of that evidence which is to control here. You must decide this case not on what any attorney has told you the evidence is, but on the evidence that you heard, on the evidence that you have seen, and not on anything else.

There have been misinterpretations of the evidence yesterday and the day before; there were statements which were just wrong. But that really doesn't matter, because you are not to decide the case on the basis of what an attorney has said to you; you have to decide the case on the basis of your recollection of the evidence, the application of the law that I give you to that evidence.

Many attorneys emphasized in the course of their summations that you are to rely on your own common sense. There are 15 of you sitting in that jury box, and 12 of you will ultimately decide the issues in this case, those 12. Each one of you comes from a different background, from a different life experience. And the virtue of the whole jury system is that you can bring together such varied experience and the common sense that each of you has from his own individual experience and apply that to the very difficult fact circumstances which you are going to be called upon to decide.

I want to emphasize that nothing that any attorney said to you, any attorney for the government, any attorney for the defense, nothing that any attorney said to you yesterday or the day before is evidence. There were some things discussed during the summations which are just not in the evidence before you. You must disregard them, because if the evidence is not before you, it is not something that you can use in deciding this case. You must decide this case on the evidence or the lack of evidence which has been presented before this jury.

Now, there have been some references during summations to a witness protection program with respect to some of the witnesses who have testified. At an earlier stage in this trial I told you -- and I repeat it now -- that the fact that witnesses are in the witness protection program is related to something entirely outside this case. There is no evidence and no suggestion that there have been any threats made by any defendant on trial in this case against any one of the witnesses who testified. You certainly must not consider even the possibility that there were such threats. There were not.

I want to just mention one more thing before I proceed in a more orderly way. In a criminal trial the government has the burden -- and you have heard this before and you will hear it again from me in the course of the charge -- of proving guilt beyond a reasonable doubt. There are nine defendants, and each one of those defendants must be considered individually. Each one of those defendants has no burden at all; he is not required to produce any testimony; he may come into court and just sit here during the trial; he need prove nothing; he is presumed innocent.

The government has the burden if any defendant is to be found guilty on any count, of proving his guilt beyond a reasonable doubt. You are not called upon to find any defendant innocent. These nine defendants in this court are presumed to be innocent, and the test is not whether he is innocent or not, so far as you are concerned; the test is whether he has been proved guilty beyond a reasonable doubt. And the ultimate verdict you will bring in is guilty, which means that he has been found guilty beyond a reasonable doubt, or not guilty, which means that he has not been found guilty beyond a reasonable doubt.

I will stress that you must accept my instructions on the law. You do not have any leeeway at all. The law as I instruct you is the law that you must apply to the facts. And you should not substitute your conception of what the law should be for my instructions as to what the law is. You should also consider my charge as an entirety; don't take any one piece and focus on it to the exclusion of other parts of the charge.

Now, I said that you are the sole and exclusive judges of the facts. That means that you must determine the weight of the evidence, you appraise the credibility, the believability, the unbelievability of the witnesses that appear before you, you draw such reasonable inferences from the evidence as in your judgment are warranted, you resolve conflicts, if you find conflicts, in the evidence.

I will later talk about various means that you can use in determining credibility, believability.

I said that nothing that any attorney said is evidence. Nothing that I say is evidence. The evidence comes from the witness stand; the evidence is the exhibits that are in evidence before you; the evidence is stipulations which attorneys have made.

The attorneys during the course of this trial have made various agreements or stipulations as to facts, and those have been read to you, those are before you.

Those three categories of evidence is the evidence that is before you.

The fact that I may in the course of this charge refer to some evidence does not mean that I consider that evidence more or less important than other evidence in the case. All of the evidence is important. You are to consider it all in your deliberations, whether I refer to it or not.

During the course of the trial I occasionally asked a witness a question. My purpose in doing that was to attempt to clarify testimony or to restate a question which I did not think was clear. Don't assume that I hold any opinion about the facts in this case or as to any matters with respect to which I asked questions.

My function is what I am doing right now, to rule on the law in this case, and you, as the sole judges of the facts, are the ones who will make the ultimate decision in the case.

I said that what lawyers say is not evidence. Questions are not evidence. When a question is asked by a lawyer, that is not evidence. Many questions were asked during the course of this trial where there was an objection and the objection was sustained. The question was never answered. A question only becomes significant when it is answered and when the context of the question is necessary for you to understand the answer.

During the trial the attorneys for the government and for the defense made various objections. Those are proper concerns of the attorneys and of myself. They don't concern the jury. You should not draw any inferences one way or another from the objections that were made or the rulings that were made on the objections.

Maybe I should mention at this point something which is often baffling to a jury, and that is the rules of evidence. These are rules that are familiar to lawyers, should be familiar to judges, but probably are not familiar to members of the jury. They are designed to make sure to the extent possible that only relevant evidence and reliable evidence reaches the jury. They have been developed through the ages. They are professional concerns of the judge and of the lawyers, and they should not be any concern of yours. What you are concerned with is the evidence which sifts through the process that went on before you.

I mentioned this before, but I will say it again: during the summations counsel for the government and for the defense made various arguments, set forth contentions on behalf of their respective clients. You should consider the arguments that the attorneys made, whether or not I refer to them in my charge. If an argument commends itself to you, accept it; if it does not, you may reject it. The arguments are not evidence; they are only suggestions that you are free to accept or reject as to how you should view the evidence.

This case is to be decided upon the evidence or the lack of evidence and the reasonable inferences that can be drawn from either the evidence or the lack of evidence as it has been presented to you. It certainly is not to be decided on the rhetoric of any attorney. This case is brought by the government against the nine defendants on trial. It is an important case, obviously, to the defendants and to the government. It is important to the government and to the public, because the enforcement of the criminal laws is a matter of continuing concern. It is important to the defendants, since each one of them is charged with having committed a serious crime. But the fact that the government is a party entitles it to no greater consideration than any other party in any litigation in this court. By the same token, the government is entitled to no less consideration. The government and each of the defendants stand as equals before you.

The charges against the nine defendants in this case are set forth in an indictment. This is the indictment (pointing). Actually, this is what we call a redacted indictment. There were many more counts or charges than are before you. This is a redaction or a reduction of the original indictment, so that it deals only with the charges that are before you. It is, as you see, several pieces of paper. And, actually, that is all that an indictment is, one or more pieces of paper. It serves as a vehicle; it serves as a means to tell the defendants what the charges are against them and to tell you what the charges are against each of the defendants.

An indictment is not evidence; it is not to be taken as evidence. Sometimes whenever anything gets put on paper, it develops a sort of a strength of its own. But that must not be so and you must not regard the indictment in that light. This is simply a statement of what the charges are. This case is to be decided not on what is in this indictment, but on the evidence that you heard in this court and saw in this court. The indictment tells you what each of the defendants is charged with, and that is its entire function. I should say that it is a limiting document in a way. The defendants are on trial only for what is charged in this indictment, and not for anything that is not charged in this indictment. So I want to emphasize that you should give no weight to the fact that there has been an indictment returned here.

Now, this indictment names 24 defendants and various other people who are referred to as co-conspirators. You are required to render a verdict only as to the nine defendants who are on trial before you:

Domingo Zayas, Orlando Machado, Luis Nunez-Ramos, Carlos Rivera-Santiago, Angelo Roche, Jose Velasquez, Fabian Rodriguez, Antonio Morales, and Anthony Rodriguez.

Now, during the trial there was evidence which you may find indicated that some of the co-defendants who are not before you or some of the alleged co-conspirators were allegedly involved in one way or another with the activities which are the subject of this indictment. The fact that some other people allegedly were involved and were named as co-conspirators is not to play a role in your deliberations. That fact should not affect your determination with respect to each defendant on trial in any manner. There should be no inference drawn by you, favorable or unfavorable, to either the government or each of the defendants from the fact that other people may not have been indicted, or if they were indicted, they are not before you. This absence of other people must not affect your deliberations in any way with respect to whether each of the defendants is guilty or not guilty of the charges against him.

When each of the defendants first came to court, he pleaded not guilty. Each of them pleads not guilty before you. They are, moreover, presumed to be not guilty; they are presumed to be innocent. By pleading not guilty to every charge in this indictment, each defendant has, as a matter of fact and as a matter of law, denied each and every material allegation in this indictment that affects him.

A defendant does not have to prove anything. He is presumed to be innocent of the charges contained in this indictment. He does not have to prove innocence; he may rely on the government's failure to establish proof of his guilt beyond a reasonable doubt. Thus, a defendant is not required to introduce any witness or evidence, call any witness, or introduce any evidence on his own behalf. He may elect not to testify; he may elect not to offer any evidence; or he may choose to rely on the evidence brought out on cross-examination of the government's witnesses.

His election not to testify must not be considered by you in your deliberations. You must not draw any adverse inference from the fact that a defendant elected not to testify. Nor should you speculate as to why he did not testify.

Now, against the presumption that each defendant on trial is innocent, the government at all times throughout the course of this trial has had, and still has, and will have all the way to the end the burden of proving the charges against each of the defendants beyond a reasonable doubt.

This presumption of innocence is not an idle phrase and is not to be taken lightly by the jury. It is an important right belonging to every defendant accused of crime. You are bound to accept the presumption conscientiously, without any mental reservation, and to give the defendant, each defendant, the full benefit of that presumption. This presumption of innocence was in favor of each defendant at the start of the trial and has continued in his favor throughout the trial; it is in his favor even as I am instructing you at this moment; it will remain in his favor throughout the course of your deliberations in the jury room.

This presumption of innocence will be removed only if and only when you are satisfied that the government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt. Whether that burden has been met, or discharged, is not necessarily a matter of the number of witnesses or evidence in a physical sense; it is a question of your considering the quality and cogency and ultimate overall significance to you of that record of evidence studied and taken as a whole. At the point that the burden is met, if it is met, the presumption of innocence will fall away.

Your function is to pass on a defendant's alleged guilt and not on his innocence. So you are not to ask yourselves whether a defendant is innocent, nor deliberate on whether the evidence shows his innocence. You are to deliberate only on whether the evidence demonstrates guilt beyond a reasonable doubt. You are not asked to find a defendant innocent. Your verdict on each count, with respect to each defendant, must be either "guilty" which will mean that you have found that the government has met its burden of proving the defendant guilty beyond a reasonable doubt -- or "not guilty," which will mean that you have found that the government has not met its burden of proving guilt beyond a reasonable doubt.

I have used the words "reasonable doubt." What is a reasonable doubt?" The words practically define themselves, in terms of what it is and what it is not.

Reasonable doubt is a doubt founded upon reason and arising out of the evidence, or the lack of evidence, as the case may be. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, to your judgment, to your common sense and to your experience.

Reasonable doubt is not caprice, whim, speculation, guesswork, conjecture or suspicion. Reasonable doubt is not an excuse to avoid the performance of an unpleasant duty. Reasonable doubt is not sympathy for a defendant. If after a fair and impartial consideration you can candidly and honestly say on the basis of all the evidence before you that you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction of his guilt-- in sum, if you have such a doubt as would cause you as a prudent person to hesitate before acting in matters of importance to yourself -- then you have a reasonable doubt.

If you have such a reasonable doubt, it is your duty to acquit.

If, on the other hand, after a fair and impartial consideration you can candidly and honestly say on the basis of all the evidence before you that you do have an abiding conviction of the defendant's guilt - - such a conviction as you would be willing to act upon in important and weighty matters in the personal affairs of your own life -- then you have no reasonable doubt. If you do not have a reasonable doubt of a defendant's guilt -- if you are convinced of his guilt beyond a reasonable doubt-- it will be your duty to convict.

Reasonable doubt does not mean a positive certainty, or beyond all possible doubt. If that were the rule, few persons, however guilty, would be convicted. It is practically impossible for one to be absolutely completely convinced of any controverted fact which by its nature is not susceptible of proof to a mathematical certainty. Thus, the law in a criminal case requires that if a defendant is to be convicted, his guilt must be established beyond a reasonable doubt, not beyond all possible doubt.

You, as I have said, are the finders of the facts. To find a defendant guilty on any count of the indictment, the evidence must satisfy you of the guilt of that defendant beyond a reasonable doubt on every essential element of the crime charged, or else you must acquit that defendant of that crime.

In the course of my charge, I will instruct you as to what are known as "elements" of a particular time. You may not convict a defendant on any charge, unless the government has proven every single element constituting that crime beyond a reasonable doubt. Thus, for example, if a particular crime has three elements, you must acquit a defendant charged with the commission of that crime if you have a reasonable doubt concerning but one of those elements and are convinced beyond a reasonable doubt as to the other two.

You may not find a defendant guilty of the charges in this indictment if the evidence as to him is that he merely was present when another committed a crime. This is so even if you find that the defendant knew that his companion was committing a crime, but did not stop him or report it to the police. You may feel that such a knowing spectator should alert the police, but his failure to do so does not make him an accomplice of the other. You should acquit the defendant if the evidence does not show beyond a reasonable doubt that he was an active participant in the crime alleged, rather than a mere knowing spectator. Nor may you convict a defendant because he was acquainted with or frequently with one who committed a crime. Guilt by association is abhorrent to our law.

Now, there are two ways of characterizing evidence presented at a trial. Some evidence is characterized as "direct evidence" and some evidence is characterized as "circumstantial evidence."

Direct evidence is the testimony of what someone saw, heard, did, said, something that occurred in the person's presence concerning which he testified before you. Circumstantial evidence is evidence where there has been proof offered of one fact, or group of facts, from which one can reasonably decide or infer that another fact exists, or other facts exists.

Let me give you an example of inferring from one fact or group of facts that another fact exists: assume that when you came into the courthouse this morning the sun was shining. You took your seat in the jury box; the blinds on the windows were drawn. During the course of the morning a person came into the courtroom with a raincoat, shaking drops of water off it. Another person came in with an umbrella and shook water off the umbrella. What you saw were the raincoats and the umbrella and the drops of water. From what you saw you may conclude, infer, that after you came into the courthouse the sun stopped shining and it began to rain. The raincoat and umbrella and drops of water were facts from which you could infer another fact-- that it was raining. They were circumstantial evidence that the weather conditions outside had changed.

Now, could you infer, instead, that the sprinkler system in the corridor of the courthouse had broken down? Arguably, you might infer that from the drops of water on the new arrivals. But given the raincoat and the umbrella, and based on your own experience, would this be a reasonable and logical inference? Do people wear raincoats and carry umbrellas to protect themselves against leaky sprinkler systems in a United States government building?

You may conclude from a fact before you something that flows from the fact, so long as it flows reasonably and logically from the fact. That is all there is to circumstantial evidence.

Circumstantial evidence, if you credit it, is to be of no less weight in your deliberations than is direct evidence. Circumstantial evidence may play an important part in your determination of knowledge, wilfulness and intent, which I shall be discussing later on.

Now, going back to this indictment, each defendant is named in Count 1 and in at least one other count of the indictment. In the determination of whether each of the defendants is guilty or not guilty, you must bear in mind that guilt is personal and individual. The guilt of each defendant with respect to the charges against him in each of the counts of the indictment in which he is named must be determined solely with respect to him, and solely on the evidence or lack of evidence with respect to him. This determination must be made separately and independently of any determination as to the other defendants. The case with respect to each defendant stands or falls upon the proof or lack of proof of the charges against him.

Now, you must make your own evaluation of the evidence, including the testimony given by each of the witnesses, and determine the degree of weight you chose to give to such evidence. It is for you to determine from the testimony and the demeanor on the stand of a witness whether or not he has given truthful, reliable testimony, or whether he has unintentionally or otherwise embroidered the truth, or falsified, exaggerated or suppressed material facts, and thus given an unreliable story.

In evaluating testimony you may consider the following factors:

The interest or lack of interest of any witness in the outcome of the case;

The bias or prejudice of a witness, if you find that he or she had one:

Relationships which the witness had with any of the defendants, or with the government, if any:

The appearance, or the manner in which the witness gave testimony on the stand;

The opportunity that the witness had to observe or note the facts concerning which he or she testified.

The probability or improbability of the witness' testimony when viewed in the light of all of the evidence in the case.

Changes in the witness' story as he testified before you, if there were such changes.

These are some -- certainly not all -- of the factors to be taken into your consideration in determining the weight, if any, that you will assign to that witness' testimony. Your own common sense will suggest other considerations.

You should consider a witness' entire testimony, his direct examination, his cross examination, and his redirect examination. You should consider the strength or weakness of his recollection in the light of all the testimony and attendant circumstances in the case; you should reflect upon the witness' demeanor on the stand, his or her apparent candor or lack of it. Did the witness comport himself or herself one way on direct examination and substantially differently on cross examination? Did that witness contradict himself or herself on the stand? Did that witness' testimony differ from his or her prior statements on the same issue? Was that witness' memory of the events better or worse at the time of trial or when he or she gave a different account than that given at the trial?

Now, the words used by a witness are not all that you may rely on in deciding about the truth of his testimony. You may take into consideration the whole conglomerate of impressions which you get from the witness. The bearing and manner of a witness may, but need not, satisfy you, not only that the witness' testimony is not true, but that the truth is the opposite of his story. Thus, a denial by one who has a motive to deny may be uttered with such hesitation, discomfort, vagueness, arrogance or defiance as to indicate that the witness is not telling the truth, and that the truth is the opposite of his testimony.

Thus, you may, but need not, find, based upon the demeanor of a witness, that his testimony is not true, and that the opposite of his testimony is the truth.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony Two or more persons witnessing an incident or a transaction may see or hear it differently. Inconsistent statements may be the result of an innocent mistake or lapse of memory, rather than a deliberate intention to falsify or change the facts. It is not unusual to utter inconsistencies at some stage along the line. If your consideration of the evidence makes it appear that there are differing versions of the facts resulting in a discrepancy in the evidence, you will have to consider whether the discrepancy involves understandable error which can be reconciled by fitting the various parts together in a rational relationship. If, however, you believe that is not appropriate, you will then have to determine which of the conflicting versions you will believe.

If you find that any witness has testified falsely as to a material fact before you, the law permits you to disregard completely the entire testimony of that witness on the principle that one who testifies falsely about one material fact is quite likely to testify falsely about everything. However, you are not required to consider such a witness as totally unworthy of belief. You may, if you wish, accept so much of his or her testimony as you believe true and reliable and disregard that which you feel is false or unworthy of acceptance.

A prior inconsistent statement which was made under oath before a grand jury or at another trial may be considered by you both as affirmative proof of facts contained in it, as well as impeaching the credibility of the witness on the stand.

In this case, sworn grand jury or other trial testimony was introduced as to certain witnesses. You may, if you so choose, consider that testimony as substantive or affirmative evidence supporting, or not supporting, the charges made in the indictment, as well as evidence impeaching the credibility of the witness. So, if you find the previous grand jury or trial testimony, given under oath, to be inconsistent with the witness' testimony before you, you may then consider that grand jury testimony affirmatively for any and all purposes in resolving the fact issues in this case.

Other prior inconsistent statements, not under oath, may only be considered as impeaching the credibility of the testimony of the witness who made them, and for no other purpose. An example of this type of statement would be the various debriefing statements which you have heard mentioned in the course of this trial.

Evidence that a witness has been convicted in the past of certain crimes may be considered by you in determining that witness' credibility. This is not to say that a person with a prior conviction or convictions is to be deemed incapable of telling the truth. It is for you to decide whether, and to what extent, the testimony of such a witness is to be believed.

So far as witnesses who have admitted lying to the grand jury or otherwise in the past, you should consider their testimony and decide whether you wish to accept or reject it in whole or in part. You may decide, for example, that an admitted liar is unbelievable, or, conversely, you may accept his testimony, recognizing that in life there are persons who have lied in the past but are not incapable of telling the truth in the present. Again, this is for you and only you to decide.

The questions of interest and motive also arise in the case of persons who assert, in substance, that they were co-conspirators in the alleged conspiracy, or that they engaged with various of the alleged conspirators and defendants in committing substantive crimes. You have heard six witnesses here: Raymond Rivera Rodriguez, Raymond Rossy, Benito Cruz, Raymond Valentine, Luis Rodriguez and Ricardo Garcia, who, you may find, fall into this category.

In the prosecution of a crime, the government frequently offers the testimony of alleged participants who themselves have criminal records in its efforts to prove criminal activity by other people. The government must often take the witnesses as it finds them. This is particularly true in cases of an alleged conspiracy or other crimes involving groups of people. Often only the people who themselves participate are in a position to have the knowledge required to show criminal behavior by others. There is no prohibition against the use of such testimony. But experience has shown that alleged accomplices may be motivated to place the responsibilities on others than themselves. Accordingly, an alleged accomplice's testimony should be closely examined, weighed with care, checked with the facts which you find to exist in this case, and against the evidence which may corroborate them, and then you should give the testimony such value or weight as you deem important under the circumstances.

It is the law in the federal courts that the testimony of such a person may be enough in itself for conviction if that testimony is found by a jury to be sufficient to show guilt beyond a reasonable doubt. At the same time, testimony from such persons is of such a nature that it must be scrutinized with particular care and viewed with particular caution. The decision as to whether it is or is not believable is up to you.

In reviewing the testimony of each of the witnesses, ask yourselves the following questions, among others:

What interests of the witness would be served, if any, by telling the truth about the criminal matters he said he was acquainted with?

Was his testimony on the central issues before you untruthful and induced by a belief or a hope that the witness would somehow receive favorable consideration concerning his difficulties or possible difficulties with the law?

Or did the witness, concerned with self-interest or conscience or whatever, decide that he would be best served by taking the witness stand and telling the truth?

Did the witness have an understanding or belief, however generated, that the best course for that witness sitting on that witness stand would be falsely to implicate one or more of the defendants here on trial?

Or did the witness come here, however motivated, with the intention of testifying truthfully?

These are just some of the considerations which you should take into account in reviewing the testimony of these witnesses. It is for you to decide whether, and to what extent, you will give credence to the testimony of each of them.

There has also been testimony before you with respect to the use by the Drug Enforcement Administration and local authorities of the services of informants and undercover agents. There is nothing improper in the use of these techniques by the government. Your agreement or disagreement with such techniques should not enter into your determinations.

The law permits, but does not require, the defendant to take the stand. Two defendants have testified before you. Obviously, each defendant has a deep personal interest in the result of this prosecution.

In appraising the credibility of a defendant, you should give due consideration to such interest in the outcome. However, it by no means follows, simply because a person has a vital interest in the result, that he is not capable of testifying truthfully. It is for you to decide to what extent, if at all, a defendant's interest has colored or affected his testimony.

Some of the defendants in this case have offered evidence intended to establish that they were in Puerto Rico at a time when the indictment alleged they committed acts charged in New York.

I caution you again that a defendant does not have any burden to prove his innocence. Should you find that a defendant has attempted to establish such an alibi, but has failed to do so, the burden remains upon the government to prove that he committed the acts with which he is charged in the indictment. In other words, you may not consider a defendant's failure to establish an alibi, should you find such a failure, as any indication of guilt.

You also recall that there has been testimony with respect to statements made by certain defendants after arrest. If you find that the defendant did make the statement, you may give the statement such weight, if any, as you believe it deserves after considering all the circumstances which were brought out in the evidence. You may consider, in determining the weight, if any, to be given the statement, whether or not it was voluntarily made;

the age, education and training of the defendant; whether or not it was induced by fear of any sort; whether or not the defendant had an attorney present when he made the statement; whether or not he was in custody; whether or not the defendant knew the nature of the offense with which he was charged; his facility in the English language. You may consider in this connection the fact, although it is not binding on you, that in the trial before you one such defendant, Orlando Machado, had an interpreter appointed by the court. Now, the post-arrest statement of a defendant may not, must not under any circumstances be considered with respect to any other defendant.

I think, ladies and gentlemen, that this may be an appropriate time to take a break, and we will now recess for lunch. The marshals will take you to lunch and bring you back. I will finish the charge after the luncheon break. We will break for approximately an hour. We will now recess for lunch.

(Luncheon recess.)

AFTERNOON SESSION

(2:00 p.m.)

(In open court; jury present.)

THE COURT: This morning I talked about the summations yesterday and I said that you were not to take anything said by the attorneys for the government or for the defendant as evidence and that what you were going to decide this case on is the evidence that has been presented during the course of the trial.

I should also say that you should not, from those summations, take one attorney's characterization of another attorney's position as being binding on that other attorney.

Let me just give you an example.

Some of the defense counsel in their summations said that so far as they were concerned there was a conspiracy here, there was a big conspiracy, but it had nothing to do with their clients.

Now, there are other defense counsel who did not say that, and so far as you, the jury, are concerned, I will talk about the crime of conspiracy in a few minutes and talk about what you should do about it, and one of the things you should do is consider each of the elements.

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So far as your deliberations are concerned, one of the issues in this case under count 1 is, was there a conspiracy?

So far as each and every one of the defendants in this case is concerned, before you can even consider the other elements of the crime of conspiracy with respect to that defendant, you must make a finding beyond a reasonable doubt based on the evidence that you have seen and heard that there was a conspiracy. And so any concessions made by some of the attorneys in their summations I would suggest, so far as your deliberations are concerned, you should disregard, because an attorney does not, in argument, offer anything that should be considered as evidence. Even his contentions are not evidence, they are simply ways that he is suggesting you should look at the evidence.

I hope I have made this clear.

One other aspect of that is that some of the defense counsel in their summations referred to certain other defendants. Again, disregard that.

The attorneys for the government or the defense counsel have not testified. Nothing that they say is evidence against anybody, and there isn't one attorney in this room who can speak for anyone else other than his particular client.

I think I should also say t[illegible] attorneys who present witnesses before you do not vouch for those witnesses. You do not have the credibility of any attorney standing behind any witness who testified before you. You are to determine the credibility of witnesses who testified before you based on your own observations, using some of the guidelines, all of the guidelines, which I suggested earlier and also using your own experience and your own common sense.

But please do not think because a particular attorney put a witness on the stand that the respect that you have for that attorney should play any part in your evaluating the credibility or the incredibility of the witness who testified.

I did say at some time earlier in the trial, and I am reiterating it now simply because I want to remind you of it, that when Mr. Rivera testified that he had dealings with a man named Ferde and that that man was Orlando Machado, you were to disregard that testimony. That testimony is to be completely wiped from your minds.

Now, this does not mean that I am taking a position on the evidence in the case, it means that I am making a ruling of law, and that ruling is that that testimony is not to be considered by you. It is just as if Mr. Rivera had never mentioned Orlando Machado.

Now, I hope I have made that clear. It is very important that you remember that.

During the summations there was some reference to certain persons, certain documents, and the fact that those persons, those documents, were not here to testify or hear in evidence.

In a federal criminal trial both the government and the defendants are entitled to receive from the clerk of the court a subpoena which will call for the attendance of a witness or which can call for the production of documents. No matter where the witness lives in the United States, he must respond to that subpoena.

So that from the failure to call a witness you may infer that the testimony of the witness might have been unfavorable either to the government or to a particular defendant, but it is equally within your discretion to draw no inference at all from the failure of the government or a defendant to call the witness.

Obviously, if a witness is unavailable, no inference may be drawn from the failure to call him.

But I would reiterate in this connection that a defendant has no obligation to produce any evidence, any evidence. A defendant is presumed innocent, and he may just rely on that presumption, rely on cross examination of government witnesses, and, indeed, he may rely on the direct examination of government witnesses. There is no obligation put on a defendant to call any witness, to offer any evidence.

Now we will turn to the indictment and the statutes that are involved in the charges here.

I told you that we have reduced the indictment so that it just contains the charges with which this jury will be concerned.

We have copies of the indictment and we will give a copy to each one of you so that as I talk about the indictment you can follow it in the copy of the indictment.

(Pause.)

The indictment used the phrase "Southern District of New York." That is a federal geographic district. It includes Manhattan, it includes the Bronx, it includes Westchester. As a matter of fact it includes all of New York State up to Albany, but I think for our purposes it includes Manhattan and the Bronx.

Now, the indictment, so far as this jury is concerned, contains 13 separate charges or counts, and you must consider each of these.

Each of the 13 counts charges a separate offense or crime. Each must be considered separately with respect to each defendant that is named in that count.

Of course, the fact that you may find that a given piece of evidence pertains to one count does not mean that you may not find that it also pertains to other counts.

Count 1, which I will refer to as the conspiracy count, charges each defendant with conspiring and agreeing among themselves and other persons to violate the federal narcotics laws by agreeing to import large amounts of brown rock heroin from Mexico to the United States and by agreeing to distribute and possess with intent to distribute that heroin in this country.

That is the first count, that is the conspiracy count in the indictment, and it takes up the first ten pages of the indictment.

The remaining counts, the remaining 12 counts, are each what we call substantive counts. Each one of them charges violation of the narcotics laws. Each one of those substantive counts names one or more of the defendants on trial, and each defendant is named in at least one of the substantive counts.

Now, there is a basic difference, and I think before you look at the indictment itself perhaps I should make this clear. There is a basic differnce between a conspiracy count, and that is count 1, and a substantive charge, and that is the other 12 counts.

Generally, a substantive count charges specific conduct which the law forbids. For example, possession of heroin with intent to distribute it, or the distribution of heroin.

A conspiracy count, and count 1 in this indictment, charges an agreement or an understanding between two or more persons to violate the law, and in this case it is an agreement or understanding which is alleged to violate the narcotics laws.

So a conspiracy to commit a crime -- and that is what is charged in count 1 -- is an entirely different and separate offense from the substantive crime, which is the object of the conspiracy.

The essence of the crime of conspiracy is an agreement or an understanding to violate other laws. If the conspiracy exists -- and of course this is something which this jury has to make a determination of, did or did not that conspiracy exist, and if it existed, did it exist beyond a reasonable doubt -- if the conspiracy exists, even if the purpose of the conspiracy has not been accomplished, it is still punishable as a crime.

Now, why is there under the law a separate and distinct crime of conspiracy?

Well, conspiracy is collective criminal activity. More than one person participates. So it is therefore generally more difficult to detect than the criminal activity of a single individual.

The crime of conspiracy, the agreement of two or more persons to violate one or more federal laws, has been made a separate crime entirely distinct from the particular crime or crimes that may be the underlying purpose or object of the conspiracy.

When a conspiracy or an unlawful agreement is charged, it is not necessary to prove that there was an actual violation of the particular law or laws which was the object or objects of that conspiracy.

So under count 1, which charges an agreement to violate the federal narcotics laws by agreeing to import heroin -- and these objects of the conspiracy are seen on page 3 -- and then to distribute it in the United States, or to possess it with the intention of distributing it in the United States, it is not necessary for the government to prove either that the heroin was imported or that it was possessed with intention to distribute or that it was distributed. Those are the objects of the conspiracy. It is not necessary to show that those objects were accomplished.

Now, with a substantive count -- and that would be the other 12 counts in this indictment -- there there is a charge that specific action was taken which violates the law, and the government must prove the violation.

Now, under certain of these substantive counts the defendants are also charged with violating what is known as the aiding and abetting law. I will explain that to you in some detail later.

Just to sum up this difference between a conspiracy count, which is count 1, and a substantive count, which are the other 12 counts, the conspiracy charge relates to unlawful combinations or agreements, agreements to violate the law, to commit crimes, whereas the substantive counts charge actual commissions of crimes, completed crimes.

The essential elements which the government must prove with respect to the conspiracy count on the one hand and the substantive counts on the other hand are different, and so I will discuss them separately and I will first discuss it with respect to the conspiracy count.

Perhaps it would help if first we read through quickly this conspiracy count.

It charges, on page 1, from the 1st of October, 1973, to the 6th of November, 1975, in the Southern District of New York and elsewhere, various people, including the nine defendants on trial here, and others to the grand jury known and unknown, including various other people, also including Raymond Rivera, Benito Cruz, William Cortes-Rios, Raymond Rossy, Raymond Valentine, who are known as co-conspirators, all of these people together, this indictment charges, unlawfully, intentionally, knowingly combined, conspired, confederated and agreed together and with each other to violate the narcotics laws.

Then on page 3, the objects of the conspiracy, which we have already briefly discussed.

It was an object of the conspiracy to unlawfully import from Mexico large amounts of brown rock heroin, and it was a further object of the conspiracy to unlawfully distribute and possess, with intention to distribute in this country, Mexican brown rock heroin.

Then the indictment sets out the means of the conspiracy. Among the means were the following:

The conspiracy took the form of a loose-knit business organization, with members of the conspiracy carrying out four basic functions:

Certain conspirators in Los Angeles, California were importers and sources of supply of heroin.

Other members of the conspiracy organized, supervised, managed, controlled and financed a New York City-based distribution organization, which is called the Gallardo organization, which directed the activities of couriers and middle-level distributors of heroin.

Couriers of the Gallardo organization traveled between New York and Los Angeles to purchase

Mexican brown rock heroin from the Valenzuela organization and these couriers distributed this heroin in wholesale quantities to certain defendants and co-conspirators in New York City who operated as middlemen, purchasing the heroin and selling it to their customers.

Now, I said earlier that an indictment is a piece of paper, and it is a piece of paper. But it serves a purpose. The purpose it serves is to tell the defendants what they are charged with and to tell you, the jury, what they are charged with. It has no weight beyond that. It is a frame of reference within which this trial is taking place and nothing more. It proves nothing, it establishes nothing. Everything alleged in this indictment must be proved by the government beyond a reasonable doubt, or to the extent that it has not been proved, this jury must bring in a verdict of not guilty.

There are three essential elements -- I am now not on the text any more, so perhaps you better look over here now.

There are three essential elements to the conspiracy charge, and the government must prove each one of these elements beyond a reasonable doubt. If it fails to establish any essential element beyond a reasonable doubt, you must acquit. If the government succeeds in proving every element beyond a reasonable doubt on count 1, your duty is to convict on that count with respect to any defendant that all three elements pertain to.

In order to prove the crime of conspiracy as alleged in count 1, the government must establish the following elements beyond a reasonable doubt:

First, you, the jury, must find the existence of the conspiracy that is charged in the indictment;

Secondly, you must find that one of the members of the conspiracy knowingly committed, in the Southern District of New York, at least one overt act in furtherance of the conspiracy and to achieve the objectives of the conspiracy; and,

Thirdly, with respect to each defendant, because every defendant is charged in count 1, you must find that he knowingly and wilfully associated himself with the conspiracy.

Now let us examine in some depth each of these three elements.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the alleged conspirators accomplished what it is alleged they conspired to do is immaterial.

A conspiracy is, quite simply, an informal, undocumented understanding for criminal purposes in which each member of the conspiracy becomes the agent of every other member.

I have used the words "informal" and "undocumented."

To establish a conspiracy the government is not required to show that two or more people sat around a table and entered into a solemn compact orally or in writing stating that they have formed a conspiracy to violate the law, setting forth the details of the plan, the means by which the unlawful project is to be carried out or the part that is to be played by each conspirator. It would be extraordinary if there was such a specific oral agreement or such a formal document.

Our common sense tells us, your common sense will tell you, that when men undertake to enter into a criminal agreement much is left unexpressed. Conspirators usually do not reduce their agreements to writing, they do not acknowledge them before a notary public, they do not publicly broadcast their plans. From its very nature, a conspiracy is almost invariably secret in its origin, secret in its execution.

It is sufficient if two or more persons in any manner, through any means, come to a common understanding to violate the law. Express language, specific words, they are not required to indicate assent or attachment to a conspiracy. Nor is it required that you, as the finders of fact, find that all of the co-conspirators alleged in the indictment joined in the conspiracy in order to find that the conspiracy existed. You need only find that one of the alleged conspirators entered into an unlawful agreement with one or more other persons in order to find that a conspiracy existed.

In determining whether or not there has been an unlawful agreement or conspiracy, you may judge acts and conduct of the alleged conspirators. The adage "actions speak louder than words" is applicable here.

Usually the only evidence of a conspiracy is disconnected acts. These disconnected acts may, however, when considered in connection with each other, show a conspiracy to violate the law as satisfactorily and as conclusively as more direct proof.

Now, in this case the defendants are charged with a conspiracy to violate the federal narcotics laws by scheming, first, to import heroin into the United States from Mexico and, second, to possess heroin with the intent to distribute it and to distribute it in the United States.

In order to find the defendants guilty of the conspiracy charged in the indictment, you must find that at least one of the violations of the federal narcotics law that I have just described was an objective of the conspiracy. Of course, as I have already said, you need not find that any of the objectives was accomplished.

Even though you do not find that any objective was accomplished, proof concerning the accomplishment of the objects of a conspiracy may be the most persuasive evidence of the existence of the conspiracy. Success of the venture, if you find it was successful, may be the best proof of the existence of the agreement.

In determining whether the conspiracy charged in count 1 of this indictment actually existed, you may consider, with the exception of certain evidence I shall indicate in a moment, all the evidence with respect to the acts, conduct and declarations of the alleged conspirators and the reasonable inferences which can be drawn from that evidence.

Now, the evidence which I say should be exluded is as follows:

There was evidence offered by the government during the course of the trial of statements allegedly made by certain defendants after their arrest. Specifically, there was testimony concerning statements allegedly made by Orlando Machado and Angelo Roche.

Now, effectively, the arrest of a person terminates his participation in a conspiracy, if he ever participated. It is an affirmative act of termination.

Those postarrest statements, if you find them to have been made, are to be considered by you only with respect to the particular defendant that you found made those statements. They are not to be considered in any respect so far as the other defendants are concerned. So that is to be excluded from the evidence which you will consider, except with respect to the particular defendant who is alleged to have made the postarrest statement, if you find he made the statement.

There was also testimony with respect to transactions engaged in by certain of the defendants which, although they were not acts which are charged in this indictment, were allegedly similar to acts charged in this indictment. These acts allegedly took place either prior to or subsequent to the time period of this conspiracy charged in this indictment.

Specifically, there was testimony with respect to an alleged prior similar act which involved Anthony Rodriguez and an alleged subsequent similar act which involved Fabian Rodriguez.

Now, testimony about these acts, if you credit them, may be considered by you only as showing a scheme or a plan similar to that alleged in the conspiracy count in the indictment or in the substantive counts with respect to the defendants involved, or a similar pattern of conduct, or it may be considered with respect to the identity of the defendant against whom it is offered.

You may consider these acts, the prior act, the subsequent act, only in connection with the defendants who are alleged to have committed them, and you may not consider them with respect to any other defendant on trial. And you may not infer, even as to the defendants who are alleged to have committed this prior act or subsequent act, from that evidence that the defendant against whom it is offered has a bad character or has a criminal propensity.

With the exception of those two classifications of evidence, postarrest statements and prior and subsequent similar acts, you can consider all of the evidence before you as to all of the defendants.

If, on consideration of the evidence, you find beyond a reasonable doubt that the minds of at least two of the alleged conspirators met and that they agreed -- and I have already talked about conspiratorial agreements -- to work together in furtherance of the unlawful scheme which is alleged, then proof of the existence of the conspiracy is complete.

If you find beyond a reasonable doubt that a conspiracy existed, it is not necessary that the government prove that all of the means alleged in the indictment to further the conspiracy were in fact brought into play. If you find that one or more of the means was used to achieve the objective, that would be sufficient.

With respect to this first element, the existence of the conspiracy, the period of time charged in the indictment runs from about October 1, 1973 to November 6, 1975, and that appears on the very first page.

It is not necessary for the government to prove that the conspiracy started and ended on those specific dates; it is sufficient if you find in fact that a conspiracy was formed and that it existed for some substantial time within the period set forth in the indictment and that at least one overt act was committed during that period.

I should note that it is the government's burden to establish beyond a reasonable doubt the conspiracy alleged in the indictment, and it is up to you, of course, to determine whether or not that burden of the government has been met.

Proof of several separate conspiracies is not proof of the single, overall conspiracy charged in the indictment, unless one of the several conspiracies which is proved is the conspiracy charged in the indictment.

What you must do is determine whether the conspiracy charged in the indictment existed between two or more conspirators. If you find that no such conspiracy existed, then you have not found an essential element of count 1 and you must acquit all defendants as to count 1.

However, if you are satisfied that such a conspiracy existed, you must determine who were the members of that conspiracy. I will discuss that a little further later.

On this question, however, of whether there is a single conspiracy or more than one conspiracy, whether there is a single, overall conspiracy, you may consider what the evidence shows as to changes of personnel and activity.

You may find a single conspiracy even though there were changes in personnel and activity, provided that you find that some of the co-conspirators continued throughout the life of the conspiracy and that the purposes of the conspiracy continued to be those which are charged in the indictment.

The fact that the parties are not always identical does not mean that there are separate conspiracies. In other words, if at all times the alleged conspiracy had the same overall, primary purpose and the same nucleus of participants, the conspiracy would be the same basic scheme, even though in the course of its operation additional conspirators joined in and performed functions to carry out the scheme while others were not active or had terminated their membership.

On the other hand, if you find that one overall conspiracy terminated and another was formed, you may not find a single conspiracy even though the purposes of both conspiracies were the same and some of the defendants were members of both.

In essence, the question is, what is the nature of the agreement or understanding? That is for you to determine after examining all the evidence.

A conspiracy, once formed, is presumed to continue until either its objective is accomplished or until there is some affirmative act of termination by its members. A conspiracy is not ended so long as the evidence shows an intention to continue it. Such intention may be inferred by you from activities by the conspirators in furtherance of the unlawful purposes of the conspiracy.

Just as the conspiracy is presumed to continue, so, too, once a person is found to be a member of the conspiracy, he is presumed to continue his membership until its termination, unless there is affirmative proof of his withdrawal or his disassociation.

Assuming that you find beyond a reasonable doubt that the conspiracy alleged in the indictment existed, then you must reach the second element, which is the commission of an overt act in furtherance of the conspiracy.

Now, what is an overt act? It is simply some step, action or conduct which is taken to achieve, to accomplish or to further an objective of the conspiracy. It is an essential element which you must find beyond a reasonable doubt. It is essential because the overt act establishes that the alleged conspiracy is more than mere talk.

We require proof of an overt act, recognizing that while parties might conspire and agree to violate the law, they might also change their minds and do nothing to put the agreement into effect. In that event, there would be no crime of conspiracy. There must be one overt act in furtherance of the conspiracy performed by at least one of the conspirators after the agreement has been made or there is no crime.

So even if you do find beyond a reasonable doubt the existence of the conspiracy, unless you also find beyond a reasonable doubt that a single overt act was committed or performed here in the Southern District of New York, then there is no crime and you must acquit each of the defendants on count 1.

Now, this overt act need not be a criminal act. It need not be done by a defendant. It must however, be done by someone whom you find to be a conspirator.

An overt act by one who is not a member of the conspiracy would not fulfil the requirements of law, which is that there be an overt act by one or more members of the conspiracy in furtherance of some object or purpose of the conspiracy.

The government contends that one or more of the overt acts which are charged in the indictment were committed.

If you look at page 4 of the indictment, you will find listed between page 4 and page 10 some 44 overt acts which the government alleges, and which the indictment alleges, were committed by members of the conspiracy which this indictment alleges existed.

It is not necessary for the government to prove that each member of the conspiracy or that any defendant that you are considering at any time committed or participated in any particular overt act since the act of anyone done in furtherance of a conspiracy becomes the act of every other conspirator.

The government is not required to prove each of the overt acts as alleged in the indictment. It is sufficient if it proves one overt act in the Southern District of New York -- now, that would include Manhattan and the Bronx -- at or about the time alleged. And the overt act need not have occurred at the precise time or place alleged in the indictment.

If you do find beyond a reasonable doubt that a conspiracy as charged existed and if you further find beyond a reasonable doubt that one or more overt acts in furtherance of that conspiracy to accomplish an objective of that conspiracy was committed, then you must determine the third element, and this is a determination which must be made separately with respect to each defendant on trial, you must determine separately for each defendant whether the defendant participated in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives.

To find a defendant's membership in a conspiracy, you must find that he knowingly and intentionally participated in it. In this connection, let us talk for a few minutes about knowingly and intentionally.

An act is done knowingly if it is done voluntarily and purposefully; not because of mistake, accident, negligence or for some other innocent reason.

An act is done intentionally if it is done knowingly, deliberately, and in the context of an alleged violation of law, with an evil motive or purpose.

Now, of course an evil motive or purpose is something that you cannot see. A man does not carry around a sign or distribute handbills saying "I have an evil motive or purpose." There is no way to find out directly what is inside a man's mind.

You decide whether or not one had an evil motive or purpose by looking at everything that you believe or credit that has been said about his activities and about what he has said. You then decide whether or not all the evidence that you believe, all the evidence that you credit about his activities indicates that his motive or purpose in acting as he did was or was not evil within the terms as I have defined them.

Evil in the context of this case means an intentional violation of, or an intentional conspiring to violate, the laws of the United States. It does not mean conduct we don't approve of.

The question of intent concerns what is in a man's mind and the purpose which motivates a person in their course of conduct. Medical science has not yet devised a means to record or to discern criminal or wilful intent. It is a mental process and attitude. Usually direct proof is not available. Intent and motive are determined from acts, conduct and circumstances and such reasonable inferences as one may draw from those acts, conduct and circumstances.

What a person knows and what a person intends may be inferred or gathered from that person's outward manifestations, what that person does, what that person says. His conduct, his words, his acts and the objective facts and circumstances disclosed by the testimony and exhibits may constitute, if you credit the testimony and the exhibits, circumstantial evidence from which you may infer a state of mind if the inference logically and reasonably flows from the evidence.

Now, the government, with respect to each defendant on trial -- and so far as you are concerned, we are talking now about a separate determination with respect to each of nine defendants -- the government must establish beyond a reasonable doubt that that defendant, aware of the basic purposes and objects of the conspiracy, entered into the conspiracy which the indictment charges with a specific criminal intent, that is, with a purpose to violate the law.

If a defendant, with understanding of the unlawful character of the conspiracy, intentionally engaged in that conspiracy for the purpose of furthering the illegal undertaking, he thereby became a knowing and wilful participant, a conspirator.

It is for you to find with respect to each defendant on trial, beyond a reasonable doubt, that he either did or else that he did not join the conspiracy.

Perhaps I should rephrase that, because unless you find beyond a reasonable doubt that he did join the conspiracy, this third element has not been established with respect to that defendant and you must acquit that defendant on count 1, the conspiracy count, because I want to get back again to this question of the government's burden and the defendant's presumption of innocence.

A defendant need not prove anything and you do not make a finding that a defendant did not join the conspiracy, the government has the burden of proving that he did join beyond a reasonable doubt.

If the government does not sustain that burden, if you do not find with respect to any single defendant that he joined the conspiracy and find that beyond a reasonable doubt, then an essential element of count 1 has not been established with respect to that defendant and that defendant must be acquitted on count 1.

What I am attempting to emphasize here is that each defendant must be considered individually.

Ask yourselves: did the defendant act wilfully and with knowledge that his acts were an integral part of the alleged unlawful enterprise and that he would help carry it forward?

You must find that the defendant knew what the unlawful purposes of the conspiracy were and intended to become a member of it as distinguished, for example, from acting exclusively on his own.

You do not have to find, before you may

consider the defendant whom you are considering to be a member of the conspiracy, that he knew that the basic purposes and objects of the conspiracy, if accomplished, would violate the federal narcotics laws. And to find beyond a reasonable doubt that a defendant was a conspirator, you do not have to find that he knew the details of the entire operation, nor do you have to find that he knew the identity of all of his co-conspirators. One of the defendants may know only one other member of the conspiracy, but if he enters into an unlawful agreement with that other member with the intention of furthering the purposes of the conspiracy, you may find that he has become a party to the conspiracy -- become a member of that conspiracy.

It is also not necessary, to find beyond a reasonable doubt that a defendant was a conspirator, it is not necessary to find that the acts which constituted his participation in the conspiracy were themselves crimes or substantive violations of law.

If a person with an understanding of the unlawful character of the conspiracy intentionally engages in, advises or assists the undertaking for the purpose of furthering it and making himself a party, you may find that he has thereby become a conspirator.

If you find that one of the defendants on trial was only involved in a single act relating to the conspiracy, that single act, such as a purchase of heroin, may or may not be sufficient to draw that defendant within the ambit of that conspiracy to make him a member of the conspiracy, a participant.

A single act, such as an isolated purchase, without more, does not make an individual a member of a conspiracy. To be a member the purchaser must have had an awareness of the larger dimensions of the seller's activities, that the seller or distributor was an intermediate between large suppliers and him. He must know, for example, that the seller, the man selling to him, had other buyers, and that it was the existence of his group, of the defendant's group, as buyers which made it possible for the seller to be moving quantities of heroin.

There must be evidence tending to prove that the defendant you are considering had knowledge of the conspiracy and that his act was intended to be and was in furtherance of the objectives and purposes of the conspiracy.

It is possible therefore, in certain circumstances, for a single act itself to be such that you may reasonably infer from it an intent to participate and participation.

With respect to inferences which are drawn or which can be drawn from the single act itself, you may consider, among other things, the purpose of the act, the circumstances under which it was done, the knowledge of the overall scheme, the overall conspiracy which the single act indicated all as bearing on the intent of the defendant you are considering, or the lack of intent, to participate in the conspiracy.

Perhaps at this point I should stress that mere knowledge by the defendant you are considering of any illegal act on the part of another or mere association by a defendant with another or mere unwilling participation by the defendant in the activities of another will not establish membership in the conspiracy.

Moreover, the fact that some of the defendants on trial are members of a family in which there are other members of the family who are members of the conspiracy does not establish membership in the conspiracy.

Mere knowledge of the conspiracy does not constitute participation. Mere similarity of conduct among two or more persons and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests does not prove the existence of a conspiracy or participation in a conspiracy.

You should not and must not infer membership in a conspiracy merely because of friendship or family relationship between alleged co-conspirators.

Mere association with a conspirator, even coupled with knowledge of the prospective or ongoing conspiracy, is not sufficient. There must be an affirmative finding by the jury beyond a reasonable doubt that the defendant you are considering participated in the conspiracy.

I must stress again, in determining whether the defendant you are considering was a party to the conspiracy, he is entitled to individual consideration of the evidence, or the lack of evidence, with respect to him, including any evidence, or lack of evidence, of his knowledge, his activity, his participation in key conversations, his participation in the plans, the schemes or the agreements alleged.

Guilt, if it exists -- and I am still talking about the conspiracy count -- guilt, if it exists, is personal and individual although that statement would apply to every count in this indictment.

One does not become a member of a conspiracy by rendering services to another. Acts done innocently, though tending to further the objective of the conspiracy, will not in and of themselves bring a conspiracy into existence -- and this is what we are focusing on now -- or render the actor a co-conspirator. There must be wilful participation in the conspiracy with an intent to further the common purpose or design.

What is necessary for you to find that the defendant you are considering was a member of the conspiracy beyond a reasonable doubt is that the defendant participated with knowledge of at least some of the purposes of the conspiracy and with the intent to aid in the accomplishment of those purposes.

In short, a person becomes a member of a conspiracy by associating himself, even though informally -- and as I said earlier with respect to a conspiracy it will almost always be informal -- even though informally, with a common plan or scheme knowing the central aim or purpose and intending to aid and bring about the success of the plan or scheme.

The guilt of a conspirator is not governed by the extent or duration of his participation or whether he had knowledge of all the operations of the conspiracy. Even if one is engaged or was engaged in a conspiracy to a degree more limited than that of his co-conspirators, he is equally culpable, equally guilty, so long as he knowingly and willingly participated.

Each member of the conspiracy may perform separate and distinct acts at different times and in different places. Thus, some conspirators may play very major roles, some may play very minor roles. But each conspirator is held responsible for all that may be done during the existence of the conspiracy and while he remains a member.

Simply stated, by associating himself with the conspiracy, he assumes equal responsibility for all the activities of every other member of the conspiracy.

When people enter into a conspiracy to accomplish an unlawful end they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one in the course of the conspiracy and in furtherance of the common purpose are deemed to be the act of the co-conspirators, and all are responsible for those acts.

I should note that this applies only to acts or declarations which are made during the continuance of the conspiracy and in furtherance of the conspiracy. It does not apply to acts or declarations which do not have those characteristics.

Let us turn now from count 1, which is the conspiracy count, to the remaining counts, which are the substantive counts.

You will notice there is a rather eccentric numbering system here and that is because there has been deleted from the draft of the indictment which you are holding in your hands the counts which pertain to defendants who are not on trial before you and hence are of no concern to you.

Each of the other substantive counts charges one or more of the defendants on trial with a violation of the narcotics laws. Those narcotics laws prohibit both the distribution of a narcotic controlled substance, and in this case the substance is heroin, and the possession of such a substance, the possession of heroin, with the intent to distribute it.

You will see from the indictment that

some of the substantive counts charge the defendant or defendants named in them with possession with the intent to distribute heroin. An example of that would be count 4.

Other counts charge the defendant or the defendants with both posesssion with intent to distribute and with actual distribution as well. Count 18 would be an example of that.

Each count charges a separate crime and it must be considered separately. And where a count charges two defendants, that count must be considered separately as to each defendant, because guilt is individual and personal, and the jury must consider each defendant individually and must determine whether or not the charge contained in the count has been proved beyond a reasonable doubt with respect to each defendant individually.

Before you can as a matter of law find a defendant named in any one of these substantive counts guilty, you must be convinced beyond a reasonable doubt that the government has proved each of three elements.

First, that on or about the date set forth in the count the defendant or the defendants named in that count possessed heroin with intent to distribute it, or, in the case of some of the other counts, actually distributing heroin. You must find that first element beyond a reasonable doubt.

T2 pm Secondly, you must find beyond a reasonable doubt that the defendant engaged in the conduct charged in the count unlawfully, wilfully and knowingly and

Third, that the substance which the defendant or defendants named in the count possessed or distributed was, in fact, heroin.

Let me explain to you a little bit more about each of these elements.

The first element requires proof, depending on the counts to which it relates, of either possession with intent to distribute or actual distribution.

Now, I have already explained that some of the substantive counts charged the named defendants with possession with intent to distribute heroin. With respect to these counts, as a first element the government must prove beyond a reasonable doubt that the defendants possessed heroin with intent to distribute. With respect to those counts which charge the named defendants with both possession and the actual distribution of heroin, the government must prove to you beyond a reasonable doubt either the posession with intent to distribute or the actual distribution of heroin.

The word "distribute" means the "actual, constructive, or attempted transfer" of the drug. The word "possession" has its common everyday meaning, that is, to have something within your control. To have something within your control does not necessarily mean to have it in your hand or pocket. Control may be demonstrated by the existence of a "working relationship" between the person having such control and the person with actual physical custody. The word "intent" refers to a person's state of mind. So, the term "possess with intent to distribute" can be fairly stated to mean to control with the state of mind or purpose to transfer that item.

This element also requires proof by the government that the crimes charged were committed on or about the dates set forth in the indictment. The dates need not be exact. The law only requires a substantial similarity between the dates alleged in the indictment and the dates established by the evidence.

Now, the second element on these substantive counts is that the possession or distribution must be unlawful, wilful and knowing. The terms "unlawful, wilful and knowing" mean that you must be satisfied beyond a reasonable doubt that the defendant under consideration knew what he was doing and that he possessed heroin, with the intent to distribute it, or that he distributed it, deliberately and voluntarily, as opposed to mistakenly or accidentally or as a result of some coercion. Of course, it is not necessary that the defendant knew he was violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his acts.

Knowledge, wilfulness and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you can arrive at a decision on these questions is to take into consideration all the facts and circumstances shown by the evidence, and to determine, from all such facts and circumstances whether the requisite knowledge, wilfulness and intent were present at the time in question. Direct proof is unnecessary. Knowledge, wilfulness and intent may be inferred from all the surrounding circumstances.

In determining whether a particular defendant acted with guilty knowledge or intent, the fact, if you find it to be true, that that defendant engaged in other transactions similar to those charged in the indictment may be considered by you. Such other transactions may also be considered by you as showing a common scheme, plan or pattern of conduct. You may consider such other acts, if you find them to be true, only in connection with the defendant or defendants who committed them, and not in regard to any other defendant on trial. And you may not infer from that evidence that the defendant who committed those acts, prior similar acts, has a criminal propensity, has a bad character.

Now, the third element of the substantive counts which the government must prove beyond a reasonable doubt is that the substance possessed, or the substance distributed, in the case of distribution, was, in fact, heroin. You must still find beyond a reasonable doubt that it was heroin. Thus, if it were novocaine, and not heroin, an essential element of the crime would be missing.

In connection with certain of the substantive crimes -- and the numbers of these are counts 18, 20, 22 and 23 -- the indictment charges that the defendants may be responsible for the distribution and the possession of heroin under what is known as the "aiding and abetting" statute. Now, you can't read these counts and discern that. The only way you can recognize it is that at the bottom of each -- why don't we look at count 18. Now, count 18 reads in October, 1974, in the Southern District of New York three named persons, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute two and one half kilograms of heroin. You will note at the bottom in parenthesis it says Title 18, United States Code, Section 2. That is the aiding and abetting statute, and that is how I know and that is how the defendants know that the government is charging under this count not only what is spelled out, but also what I am about to discuss with you, which is, aiding and abetting.

I think I left out one of the counts. It is true of count 18, count 20, count 22, count 23 and count 27.

As to count 27, it is a little bit more difficult to discern this, because the 2 has been left off at the end. But those are the counts that also charge the defendants with aiding and abetting each other.

This charge is based on a federal law which reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

With respect to these counts again, 18, 20, 22, 23 and 27, it is not necessary for the government to show that the defendants charged in those counts personally committed the crime which is alleged. Under this law a person who aids and abets another to commit the crime is just as guilty of the offense as if he himself performed every act related to it.

So, you may find a defendant charged in any one of those counts, 18, 20, 22, 23 and 27 guilty of the crime charged if you find beyond a reasonable doubt that another person committed the crime and that the defendant under consideration named in those counts aided and abetted that other person in committing the crime.

Now, to find that a defendant aided and abetted another in committing a crime, you must be satisfied that the defendant under consideration in some way knowingly associated himself with the criminal venture and he participated in it as something he wished to bring about and by some action of his own tried to make it succeed, that he had a stake in this venture. In other words, if one fully aware of what he is doing plays a significant role in furthering a transaction prohibited by law, he is an aider and abettor, and as such is equally guilty with the person who directly performed the illegal acts which constitute the crime. So you may find the defendants named in counts 18, 20, 22,23 and 27 of the indictment guilty as charged, if you find beyond a reasonable doubt that the other defendant named in that count committed the offense charged in that count and that the defendant under your consideration aided and abetted that person in committing it.

Here again, I stress, that to find a defendant guilty ou must find something more than mere knowledge on his part that the crime was being committed. You must find that he was more than a mere spectator of the crime.

I have talked to you at considerable length through this charge about the state of mind of a defendant, with respect to establishing intent, establishing knowledge, establishing wilfulness. I want to add this: in your consideration of a defendant's state of mind during the alleged commission of the crimes charge, you may consider evidence concerning his heroin addiction during the period of the offense as bearing on his capacity to formulate the required specific intent.

The use of heroin, or heroin addiction, is not by itself a defense to these charges. However, evidence that a defendant acted while under the influence of heroin may be considered by you in determining whether the defendant acted with specific criminal intent. I think we are talking of only one defendant, because I think there was evidence offered with regard to heroin addiction as to one defendant.

With respect to that defendant, in determining whether the use of heroin may have affected his capacity to form the specific intent to commit the crimes charged, you must determine, first, whether he was under the influence of heroin at the time of the charges alleged against him, and, second, the extent to which his use of heroin affected him. Did his use of heroin, if any, so affect him that he was unable to act wilfully and knowingly and with a specific criminal intent at the time of the acts he is alleged to have committed?

If the jury finds from the evidence that there is a reasonable doubt that the defendant's mind was able to entertain a criminal intent because of his heroin use in the relevant time periods charged in the indictment, then you should acquit him. If you have no such reasonable doubt, you should convict the defendant, if you find beyond a reasonable doubt that all of the elements of the crimes charged have been proven with respect to him.

Thus, a good or understandable motive for certain conduct is not a defense of that conduct constitutes a crime. If you find beyond a reasonable doubt that a defendant acted knowingly, wilfully and with a specific criminal intent, then his motive, his reasons for so acting, is material, except insofar as it may bear on intent.

I want to stress again, ladies and gentlemen of the jury, that your consideration here must be individual with respect to each of the nine defendants. Defense counsel yesterday in their summations went to some pains to attempt to suggest this to you, and I say, as a matter of law, you must do it. We are dealing with an area here which is one that everyone is very upset about. There is always danger in a case like this that because we are dealing with heroin -- and we all recognize the curse which heroin has been to us, to our society -- that we will stop thinking and we will become irrational. But each one of you was chosen as a juror by the attorneys on both sides here, because it was their judgment that you would not act irrationally, that when you put up your right hand and took your oath as a juror, you would recognize that oath. And part of that oath is that you will consider each defendant as an individual and that you will weigh the evidence with respect to that defendant, that you will recognize that that defendant is presumed to be innocent, that you will recognize that that presumption of innocence is a very, very important bulwak of our whole democratic process, and that you will consider the evidence and the testimony in accordance with the instructions which I have given you, and that you will a true and fair verdict render based on your experience and your common sense, on your conscience, on your oath.

I think all in this courtroom -- I think I speak for government counsel and defense counsel -- have confidence that you will do this.

I have almost, but not quite finished my charge, ladies and gentlemen, and at this time we are going to take about a 15-minute recess. I promise you there won't be more than five minutes after that recess. So we will take that 15-minute recess.

(Jury excused.)

THE COURT: The purpose of the recess, gentlemen, was to hear any objections or suggestions.

Mr. Cunniffe?

MR. CUNNIFFE: With respect to overt act number 1 it mentions a Carlos Gallardo, also known as Carlos Santiago-Bautista. I am somewhat concerned that the jury, none of them being Hispanic, might confuse that alias, Carlos Santiago-Bautista, with Carlos Santiago, my client. I request that they be instructed that they are not the same person.

THE COURT: Very well, sir.

MR. BRODERICK: Your Honor, you may recall -- I think the day was May 31st -- when you originally instructed the jury to disregard Rivera's testimony concerning Orlando Machado. You also told them that it was a misidentification. And, of course, the other day I quoted that exactly in my summation to the jury.

Right now you stated, you told them to disregard it, but you did not use the words that there was a misidentification. I understood that would be charged to the jury.

THE COURT: I don't have any problem with that at all. It was a misidentification, and that is what I said the last time. What I told them right now was to disregard it. I don't think I could have put it more strongly.

MR. BRODERICK: The additional phrasing was that there was a misidentification.

THE COURT: I have accomplished the same purpose by giving the charge again by telling them to disregard that testimony. What difference does it make whether it was a misidentification or not; I told them they must disregard it. I told them in the strongest terms I could have told them, and I don't think it is undercutting your summation. I didn't say that your summation was incorrect.

MR. BRODERICK; I don't mean to infer that. I am just suggesting that there is a difference between telling them to disregard it and telling them to disregard it because there was a misidentification. The additional phrase, I suggest, is much stronger.

THE COURT: Mr. Mendez?

MR. MENDEZ: I have no objection to the instructions. Your Honor was referring to post-arrest statements and you mentioned the post-arrest statement of the defendant Orlando Machado, and you recall it was a statement to the effect that he went to Mexico or to California, which I think is incriminatory. You also mentioned the fact that Angelo Roche had made a post-arrest statement.

THE COURT: He said, "That is my car."

MR. MENDEZ: That is the only statement he made, and he consented to a search. That statement was not so incriminating.

THE COURT: I didn't say it was incriminating.

MR. MENDEZ: I know your Honor didn't say anything about the nature of the statement, but I am worried. There has been so much evidence in this case that the jury at this stage might not even remember what was his statement. I would like the jury to be told that the statement made by Angelo Roche was that the car in front of his house was his car.

THE COURT: I won't do that. If I did that I would have to go back and do it with respect to maybe half a dozen other things. I did it generally because I made a decision not to get into the facts, and I am not going to get into the facts. I think that was a necessary charge, because there are eight other defendants here, and to the extent that there was anything incriminating in either his identification of the car or anything else, I think another defendant can properly object if I didn't make it clear that that statement was only binding on Mr. Roche, and I am inclined to agree with your view that it is not particularly incriminating.

MR. MENDEZ: I agree with you. The only worry I have is there has been so much testimony in this trial that the jury might think what was characterized as a post-arrest statement was the admission of something.

THE COURT: Well, I just don't think I will say anything more about it.

MR. MENDEZ: Very well, your Honor, except that I am very satisfied with your instructions.

MR. STOKAMER: Your Honor, I would just like to note my exception to your Honor's charging concerning the defendant's power of subpoena.

THE COURT: I tied that in my charge with a reiteration of the defendant's absolute right to stand mute and a defendant's lack of obligation to produce any evidence. Your objection is noted.

MR. STOKAMER: Also, I think perhaps I missed it, I don't know. Did your Honor charge the jury concerning the witnesses' agreements with the governments to tell all their involvements and the truth and all their associations as not being evidence of that? I framed request number 3 and your Honor said except for the fact that my request said written agreements, because it was framed before the start of the trial, and your Honor indicated that you would charge the substance of it.

THE COURT: May I see it, please?

MR. STOKAMER: Yes.

THE COURT: Frankly, Mr. Stokamer, I did not charge this. I remember we had a discussion of this and I do not recall the discussion. I do recall, however, why I did not charge this. I did not charge this because it does deal with written agreements, and if you take out the written agreements, you are saying that the agreements as testified to are no evidence at all. They certainly are evidence. Each of these defendants testified at some considerable length on cross-examination with respect to their agreements with the government.. Now, I am not going to charge that that is not evidence.

MR. STOKAMER: I am not asking you to charge this is not evidence, but they are not self-authenticating. The fact that they made those agreements does not make their testimony truthful. Whether or not the agreements were written or oral does not change the charge.

THE COURT: It changes the charge in that there is evidence elicited in this case about those agreements, and it is evidence. I am not going to charge the jury that that evidence is not proof of what it purports to be proof of.

MR. FIGUEROA: On behalf of Anthony Rodriguez I was wondering whether the Court might consider charging as to aiding and abetting the fact that you must consider the evidence concerning Anthony Rodriguez's heroin addiction as to the element of knowingly associating himself with a criminal venture and aiding and abetting and knowingly participating in it. If your Honor would do that, I think it would balance out the charge as to specific criminal intent relative to the conspiracy. You have given a charge as to conspiracy, but, then, there is the other alternate which they might find him guilty on as far as aiding and abetting.

THE COURT: I deliberately gave it at the end so it would have application to everything that went before, Mr. Figueroa. I am not going to go into it again. I did not give it with specific reference to the conspiracy.

MR. FIGUEROA: But your Honor, my point is if you give it as to criminal intent in the conspiracy, then the same logic, it would seem to me, would apply to the intent on being an aider and abetter. That is my point. I may be wrong on that, your Honor. But it seems to me that it is equally applicable to both bases of criminality.

THE COURT: I started off by saying "In your consideration of a defendant's state of mind in the alleged commission of the crimes charged, you may consider the evidence concerning his heroin addiction." I didn't say "with respect to conspiracy" or "with respect to the substantive counts." I said "the crimes charged." I didn't deliver that in connection with my charge on conspiracy. I delivered it at the end, and it was my intention, at least, that it encompass everything that went before.

MR. FIGUEROA: Will you note my exception?

THE COURT: Yes.

MR. MITCHELL: Your Honor, I have one request on the similar act that was testified to by the police officer. I am using the specific example as to certain acts, and I ask your Honor to charge the jury that being a question of fact for the jury, that is, a similar act is a question of fact for the jury, they must determine whether there is a similar act, the same as if they were determining the substantive count. In other words, they have to find beyond a reasonable doubt that there was a similar act and that the elements necessary for a similar act were present.

THE COURT: I don't believe they have to find it beyond a reasonable doubt.

MR. MITCHELL: The mere obligation that there was a similar act is not sufficient, I think.

THE COURT: But I don't think that is one of the things they have to find beyond a reasonable doubt. I don't know of any evidentiary matter there that the beyond a reasonable doubt standard would apply to.

MR. MITCHELL: They must, at least, find that there was.

THE COURT: I think that is correct.

MR. LANDAU: Your Honor, I am sure that the jury has some difficulty with Mr. Krieger's word "anathema." I don't know whether the jury knows what "anathema" means, and whatever you try to get across may not have gotten across.

I would again request that your Honor charge this jury with reference to the prosecution witnesses Rivera, Cruz and Valentine with reference to the fact that what might be considered when the jury considers their credibility, the fact that they are still liable if the government, state or federal, chooses to prosecute them for the crimes with reference to this conspiracy that they have testified to.

THE COURT: The government has suggested that if I give anything that comes close to that charge, I should also charge the jury that if they testified falsely they are subject to prosecution for perjury. Do you have any objection to that?

MR. LANDAU: I think it has been borne out that the government has not proscuted them for perjury during the times that they have, in fact, admitted that they perjured themselves. What I am trying to get across to your Honor is the essence that they are still liable for criminal narcotics charges, and this is something the jury should know with reference to their motivations for appearing and testifying. I submitted it in greater detail in a request to charge that I submitted to your Honor and to Mr. Moss this morning.

THE COURT: Is there anything else, gentlemen?

MR. BRODERICK: Yes, your Honor. I know you stated you gave a charge to the jury concerning a statement by Orlando Machado. I may not have heard it all. I suggest to your Honor that I don't know whether you indicated to them that they consider the elements of voluntariness in considering that statement, even considering it at all. Second, whether he understood the language. I think you just told them that he made a statement, not much more than that.

MR. MOSS: Your Honor, I have four matters, and then perhaps one or two rejoinders.

First of all, your Honor charged with respect to intent and prior similar acts, that there was a similar act with regard to Anthony Rodriguez and a similar act with respect to Fabian Rodriguez. I think your Honor omitted the prior acts of Fabian Rodriguez in 1971, when he and Gilberto Torres were dealing with Raymond Rossy.

MR. MITCHELL: I am going to object. Your Honor used it as an illustration.

THE COURT: I think I will handle it by saying it is their recollection of the evidence that controls.

MR. MOSS: If Mr. Mitchell and the defense attorneys have any objection, I am not pressing the point in order for you to recharge on the matter.

THE COURT: I understand why you are doing it. Apparently there is this problem with the defense bar.

MR. MOSS: Your Honor, right at the close of the charge this morning before lunch you mentioned that among the factors that they could consider when they considered whether Orlando Machado's post-arrest statement was voluntary, the fact that the court appointed an interpreter. When I had originally objected to Mr. Broderick's statements in his summation about the fact that they could consider the appointment of an interpreter, the objection was made because your Honor appointed an interpreter, in essence, because the defendant requested one.

THE COURT: I realize you made that point last night and I agreed with it. I also did some further work last night on the charge, and in reviewing the matter I did make certain inquiries with respect to who would have interpreters and who would not have interpreters and I made an affirmative determination that certain people would not have interpreters, and I did appoint an interpreter for Mr. Broderick's client.

MR. MOSS: But the point is, your Honor, it was not after an examination of the defendant to determine whether he could speak English, and that is the clear inference from your language to the jury.

THE COURT: I am afraid you may be right. And, at the same time, I made sufficient inquiry that I satisfied myself that at least one, and perhaps two, but certainly one defendant was not entitled to an interpreter and that Orlando Machado was entitled to an interpreter.

MR. MOSS: Your Honor may remember at the hearing when that was determined, Mr. Broderick also admitted that when he spoke to his client at the Metropolitan Correction Center he spoke without the services of an interpreter.

THE COURT: I remember that.

MR. BRODERICK: You also remember that it took me half an hour to have a five-minute interview because he did not understand.

THE COURT: Come on, gentlemen, we have a jury and we want to bring them back.

MR. MOSS: The point, your Honor, I think the jury will feel that your Honor is telling the jury by way of your charge that the court has determined that the defendant Orlando Machado speaks no English, and in that regard I think you misled the jury. I am not suggesting that you say the opposite, that he does speak English. But the point is that he was given an interpreter without any examination by the court to determine whether he spoke English or not.

THE COURT: What troubles me, Mr. Moss, to a certain extent I did make, perhaps not as thorough an inquiry as I should have made, but I did make inquiry. And

Mr. Broderick said in his summation that I had appointed an interpreter. And I agreed with you last night -- maybe I didn't agree on the record -- but I agreed with you that that was inappropriate. But working over it last night I decided I would not go into it any more. At any rate, I note your position. I am not going to change it.

MR. MOSS: The government in its request to charge number 45 has asked the court that it instruct the jury that the possible punishment that a defendant might receive is of no concern to it, and I think especially in light of the arguments of counsel on summation that is an appropriate charge.

In request number 46 the government requested that the court charge the jury that sympathy is to play no part.

THE COURT: That is coming up. I have not finished the charge. I have to wrap up on the charge, and that is in the wrap up part of the charge.

MR. MOSS: Just one more point: The government objects to the court restating its charge regarding the identification or misidentification of the defendant Orlando Machado, and the precise grounds for its objection is that Mr. Broderick is just being another opportunity to restate part of the charge that is favorable to his client. I don't think it would serve any purpose.

THE COURT: Mr. Broderick, I'm not going to charge it.

MR. BRODERICK: Your Honor, I have a couple of minor other points. Your Honor indicated that a reasonable doubt should not be based on suspicion, conjecture or surmise. I suggest to your Honor that perhaps you might-- that is, of course, an accurate charge -- but I suggest, your Honor, you might want to charge the jury that a conviction cannot be based on those things --a conviction can't be based on a feeling or a hunch or a surmise or a suspicion.

THE COURT: Mr. Broderick, if that jury has had anything pounded into them, it is reasonable doubt. I had it in every other sentence. I am not going to charge anything more about it. I am not going to suggest to them that it is possible a conviction might be based on surmise.

MR. BRODERICK: Your Honor also indicated to the jury that the presumption of innocence continues until the jury is convinced beyond a reasonable doubt of the guilt of the defendants. I suggest, your Honor, that a much more accurate way of putting that would be that the presumption of innocence continues throughout the trial and into the jury room. It is only then when they start considering the case, if at that time they are convinced beyond a reasonable doubt of the guilt. Now, the difference can be that one of the jurors could have been convinced two weeks ago.

THE COURT: I think you are stating precisely what I said. They are not going to find it out here; they are going to find it in there.

MR. BRODERICK: Maybe it is the interpretation of the words.

THE COURT: Anything else?

MR. BRODERICK: I think you asked your clerk to look into the elements of voluntariness. I don't know whether you gave a decision on that. And my exception.

THE COURT: Let me just read to you what I said, Mr. Broderick. I hate to take this time. The jury is in. We are just losing time:

"You may consider in determining the weight to be given the statement whether or not it was voluntarily made, the age, education and training of the defendant, whether or not it was induced by fear, whether or not the defendant had an attorney present when he made the statement, whether or not he was in custody, whether or not the defendant knew the nature of the offense with which he was charged, his familiarity with the English language."

Now, what is there that I left out, Mr. Broderick?

MR. BRODERICK: I don't take any exception.

THE COURT: Gentlemen, one of the jurors has asked Mr. Kesseling if we would have the defendants stand up. Now, this has been a problem. Yesterday in the summations some attorneys identified their clients. I think Mr. Roche was identified several times. Some didn't and some did have their clients stand. And there has been movement of defendants. On one occasion it was for tactical purposes. But there has been movement of the defendants. The jury is sort of interested, since there has been emphasis by everybody on individual consideration, that I take it they are interested in being sure who the defendants are. I would propose when they come back and in my wrap up to ask each defendant to stand up and just remind them each individual must have individualized treatment.

Do counsel have any objection?

MR. LANDAU: I have no objection.

MR. MITCHELL: You may as well associate them with their particular attorney.

THE COURT: I think that may be a good idea. I will ask the attorney and the defendant to stand.

MR. LANDAU: Has your Honor considered my request?

THE COURT: I think I will not, Mr.Landau.

MR. LANDAU: Mr. Moss stated, I believe, that he would go along with my request if you also added the matter as to perjury.

THE COURT: I don't think he did say he would go along with it. He said if I did it, I certainly should do that. And I have not yet had any statement from the defense side of the room as to whether they have any objections to my doing that.

MR. LANDAU: Is it your decision you won't do it at all?

THE COURT: Just one second. If we are talking about delivering this proposed charge --

MR. LANDAU: I think, your Honor, under the substance of what I'm trying to say, is that they are still capable of being prosecuted by the state and by the federal government if the prosecutors wanted to bring charges against them.

THE COURT: I won't do that. What I would consider doing is taking judicial notice, which I can do at any time, of the fact that the statute of limitations has not run on various criminal charges that the witness testified that he committed, and I will tell the jury that that is something that I take judicial notice of, and it is a fact which they may or may not consider. They are not required to consider it. I will say another fact which they may or they may not be willing to consider and of which I have taken judicial notice is the fact that any witness who testifies and testifies falsely is subject to perjury.

MR. MENDEZ: I prefer that you do not give that instruction on behalf of Angelo Roche, especially about perjury. I certainly oppose that instruction.

MR. LANDAU: Would your Honor just consider telling the jury what the statute of limitations means, in addition?

THE COURT: In addition to what?

MR. LANDAU: Taking what you said.

THE COURT: Well, I just have had an objection to it and I am not sure that I will even consider giving it in light of that objection.

MR. LANDAU: Then I will ask for a mistrial. I am forced to go to trial with these people, and if they don't want to conduct the trial in the way I feel it should be for my client -- and I have come across this on many occasions -- then I once again request a mistrial based upon this and all the other items I brought to your Honor's attention prior to that.

THE COURT: Motion denied.

MR. BRODERICK: Your Honor, I apologize for taking up further time, and I mean that, but I have to bring out this point, minor point. I believe your Honor stated to this jury that the government has to take its witnesses as it finds them. I suggest that was close to what Mr. Moss said.

THE COURT: I must say I wrote that before I heard Mr. Moss. I think you saw one of my prior chargs.

MR. BRODERICK: I am taking exception, your Honor, for this reason, that it seems to characterize and show an understanding of the government's difficulties with its witnesses, and what I am suggesting is perhaps a more objective way of putting it, instead of just showing an understanding of the government's problems. We could just state there are certain government witnesses, and then go on from there, instead of showing an understanding of the government's witnesses, particularly in this case. It comes pretty close to marshaling the evidence, is what I am saying.

THE COURT: I don't think it does, Mr. Broderick.

(The jury took its place in the jury box.)

THE COURT: Ladies and gentlemen of the jury, in the course of my charge I made various references to errors which counsel made in the course of their summations as to the facts, and I told you that it was your recollection and not theirs that governed. Now, while you have been in recess counsel have had a discussion and they have drawn to my attention at least one error that I have made with regard to the facts, and I am going to handle it just by telling you that your recollection governs, not mine, not theirs. This had to do with subsequent acts and similar acts. I instruct you that you were to consider evidence of subsequent acts and similar acts only with respect to the defendant against whom they were offered and against nobody else. That is an accurate instruction as to the law. And I cited some. Well,it turns out I left out one. But I will leave it to you to recollect the facts. Just remember that in a situation where there was evidence of a subsequent act or a prior act -- and when I say subsequent or prior, I am talking about before or after the period of the conspiracy -- they are to be considered only with respect to the defendant or defendants against whom that evidence was offered, and, of course, it is for you to determine the facts with respect thereto; it is for you to make the determination as to whether they were or were not similar acts, as to whether they did or did not happen. The testimony is before you. You are the fact finders, and that is just like any other testimony or evidence in this case. You are to determine whether you believe it or not, whether you credit it or not, and the extent to which you do it, and then the weight which you will give it.

Now you still have in your hands the indictment. I would like you to take a look at page 4 of the indictment, overt act number 1.

Overt act number 1 alleges that in August, 1974, various people attended a meeting in Puerto Rico and discussed the admission of Raymond Rivera into the Gallardo organization. Now, that may or may not be familiar to you, because we have had testimony about it. But the particular thing I want to draw to your attention is that it refers to somebody named Carlos Gallardo, also known as Carlos Santiago-Bautista. Now, the name Carlos Rivera-Santiago is familiar to you, because that is the name of one of the defendants. The point I am making now that the Carlos Santiago-Bautista referred to there is not the defendant in this case. There is running through this trial a lot of confusion about names, and I just want to specifically point out that this Carlos Santiago mentioned in that overt act is a different one, not the defendant on trial.

I said in the course of my charge that guilt by association is an anathema to our system. I just want to stress what I mean by that. We demand proof of charges, and we as a society reject the whole idea that a person can be guilty when he associates with somebody else, and that is something which in a case such as this the jury must have very much in mind. When I used that word "anathema" I just meant to say that it was something that we just don't consider as acceptable in our society or our democracy.

One other point I want to make is that there was some discussion in summation about punishment. I think it very important for the jury to realize that on the division of functions, punishment is of no concern to the jury. You are rendering a decision on the facts, and punishment is my concern, and not yours. So you must not consider it. Here again I am talking about your oath. You must not consider as jurors in determining the issues in this case, and determining whether or not the defendants are guilty as charged beyond a reasonable doubt, you must not consider the question of punishment. It is not only something you don't have to decide, it is something you must not consider. You have a heavy responsibility in deciding the facts; you must not concern yourselves with something that is not your responsibility, and that is the question of possible punishment if there is a finding of guilty beyond a reasonable doubt. At any rate, it is something which should not enter into your deliberations at all.

I promised you five minutes, and that promise begins to run from now. If you find a reasonable doubt that one or all of the defendants has committed one or all of the offenses charged, if you have a reasonable doubt, you must acquit. If you find beyond a reasonable doubt that the law has been violated as charged, then as to that defendant that you make that finding and as to the charge you make that finding, if you make it, you must render a verdict of guilty.

Now, under your oath as jurors -- I keep coming back to your oath as jurors, because it is very important-- we have a viable legal system in this country and a viable system of criminal justice because we have a jury system where jurors recognize the sanctity of the oath they have taken as jurors and perform accordingly-- now, under your oath as jurors you are not to be swayed by sympathy or by prejudice; you are to be guided solely by the evidence in the case. The crucial, hard-core question you must ask yourselves as you sift through the evidence, is where do you find the truth? This is a quest for the truth. The ultimate verdict that you bring in will be your announcement, not only to the people in this courtroom, but to the whole world, this is what the truth is. A trial is a quest for the truth. And the only triumph in any case, civil or criminal, particularly criminal, is whether or not the truth has triumphed. If it has, then justice will be done, and, if not, justice will not be done. So you are to render a verdict as to these defendants solely on the basis of the evidence and subject to the law as I have charged the law.

Now, the most important part of the trial is about to come; it is the role that you jurors are about to play, because it is for you and you alone to decide with respect to each defendant in each count whether the defendant is guilty or not guilty of the charges.

I know you will try these issues in accordance with your oath, and I suggest that if you try them without combining your thinking with any emotion, you will arrive at a just verdict. Calm deliberation and common sense are the qualities which you should bring into the jury room.

The charges are most serious. The just determination of this case is important to the government and to the public, and it is equally important to the defendants. Under your oath as jurors, you must decide the case without fear or favor and solely, as I have stated any number of times, in accordance with the evidence and the law.

If the government has failed to carry its burden as to any defendant on any count, your sworn duty is to bring in a verdict of not guilty with respect to that defendant on that count. If the government has carried its burden with respect to any defendant and established his guilt on any count beyond a reasonable doubt, you must not flinch from your sworn duty, but you must bring in a verdict of guilty against that defendant on that count.

The verdict which you will render must represent the judgment of each juror. You must consider each count separately and render a separate verdict as to each count; you must consider each defendant separately on each count in which he is charged and render a separate verdict as to each defendant on each count on which he is charged.

You will take into the jury room with you a copy of the indictment. You may, in fact, keep the copies of the indictment you have, if you wish, but I would suggest that you not spend much time reading the indictment, because, essentially, what you should do when you go into the jury room is carry on the discussions that I have prohibited you from carrying on these past six weeks. This is the time for talking, it is not a time for reading, for the indictment is intended as a guide, it is the basis, the framework that you will be rendering a verdict on as to the various counts. It is not light reading matter. And the purpose of your discussions is for you to consider between yourselves and counsel with yourselves as to the evidence that has been presented and as to the issues that are before you.

We have prepared for your guidance a schedule of the counts of the defendants, and you may bring that with you into the jury room. I will send in also a copy of it, so that you can save this for your final verdict. But I think it will help you in focusing. So we will give this to the forelady.

It might be useful, as I stress again, the necessity of considering the individuals, the defendants here. This is a trial of nine people. They are nine separate people, and with respect to each of those people you must render at least two verdicts, because each of them is charged in the conspiracy count, each of them is charged in at least one substantive count.

I think it might be well if I ran through the list of defendants and their attorneys and asked them to stand, just so that you can relate the attorneys to the defendants:

Mr. Jerome Alan Landau representing Mr. Domingo

Zayas.

Mr. John S. Broderick, representing Mr. Orlando Machado.

Mr. Theodore Krieger, representing Mr. Luis Nunez-Ramos.

Mr. Hugh Cunniffe, representing Mr. Carlos Rivera-Santiago.

Mr. Theodore Mendez, representing Mr. Angelo Roche.

Mr. Kenneth Linn, representing Mr. Jose Velasquez.

Mr. Robert Mitchell, representing Mr. Fabian Rodriguez.

Mr. Michael Stokamer, representing Mr. Antonio Morales.

Mr. Nicholas Figueroa, representing Mr. Antonio Rodriguez.

(As the Court called the names, the attorneys and their respective defendants stand.)

THE COURT: (Continuing) Now, in order to arrive at a verdict on any count with respect to any defendant, it is necessary that each juror agree to that verdict. Your verdict on each count with respect to each defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching an agreement, if you can do so, without doing violence to your own conscience and your own individual judgment. Each of you must decide the case for himself. But do so only after an impartial consideration of the evidence in the case with your fellow jurors.

Put the sheet which is being given to the forelady aside for quite a while, because discussion is very important. Each one of you, as I said earlier, brings a different experience to that jury room. Each one of you is in a position to have a unique input into the deliberations. In the course of your deliberations don't hesitate to reexamine your views and change your opinion if convinced that it is erroneous. But don't surrender your honest conviction as to the weight or effect of the evidence only because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Please remember at all times that you are not partisans; you do not take sides; you are judges, judges of the fact. Your sole interest is to seek the truth in the evidence that has been presented to you.

Now, if you are divided, do not let me or let anyone know how you are divided. I am not interested in knowing that at any particular time on any particular count. If the jury stands 6 to 3 or 4 to 8, I don't want to know that. As a matter of fact, I would be extremely unhappy to learn that. That is not information which anyone outside the jury room should know. So don't report how you stand. And when you do reach a verdict, do not report what it is until you are asked in open court.

I am sure that if you listen to the views of your fellow jurors, if you apply your own common sense, you will reach a fair verdict.

If at any time during your deliberations you want more information, ask for it. For example, if you want me to define any term in my charge, don't hesitate to ask me.

If you want testimony read back, or want any exhibit, ask for it. Obviously, you won't remember the number, so just do it by description. Say, "I want this exhibit or that exhibit," but when you ask for these things don't expect an instant reply, because if you ask for testimony, it is going to take some time to determine what your question means, and then it will take some time to find the appropriate testimony in the record, and it will take time for all counsel to agree what it is.

Now, so far as the timetable is concerned, these have been long days. Today, again, is a long day. What I suggest is that the jury deliberate from now until approximately 7 o'clock, and then at 7 we will adjourn for the day and resume tomorrow morning at approximately 9:30.

I think that pretty well completes my charge.

Will you swear the marshals.

(Marshals sworn.)

THE COURT: I think I should explain at this point that the alternate jurors part company from the 12 sitting jurors and they do not participate in the deliberations.

Thank you very much and you may now retire to deliberate.

(The jury retired to begin its deliberations at 4:30 P.M.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America

-v-

Fernando Gallardo, et al.,
Defendants.

x
x
x
x 77 Cr. 0100
x
x
x
x

New York, N. Y.
September 19, 1977
2 pm
Room 128

Before:

Hon. Vincent L. Broderick,
District Judge.

A P P E A R A N C E S:

Robert B. Fiske, Jr., Esq.
United States Attorney;
James Moss, Esq.,
Assistant U. S. Attorney
and
Richard Zeigler, Esq.,
Assistant U. S. Attorney,
of counsel.

A P P E A R A N C E S: (continued):

Jerome Landau, Esq.
Attorney for defendant Domingo Zayas

Theodore Krieger, Esq.,
Attorney for defendant Luis Nunez-Ramos

Hugh Cunniff, Esq.
Attorney for defendant Carlos Rivera-Santiago

Kenneth Linn, Esq.,
Attorney for defendant Jose Velasquez

Robert Mitchell, Esq.,
Attorney for defendant Fabian Rodriguez

Michael Stokamer, Esq.,
Attorney for defendant Antonio Morales

Nicholas Figueroa, Esq.,
Attorney for defendant Anthony Rodriguez

Also present:

Mr. Richard Schoen, Interpreter for defendant Antonio Morales

- - -

THE CLERK: For sentence, United States of America v Domingo Zayas.

Both sides ready?

MR. MOSS: The government is ready.

MR. LANDAU: Defendant Zayas is ready.

THE COURT: I think perhaps before I hear from the government or defense counsel I will just outline a few of the considerations which I had in preparing for sentencing.

The first consideration, of course, are the charges of which Mr. Zayas was convicted--conspiracy to violate the narcotics laws in count 1, and the intentional and knowing distribution and possessing with intent to distribute 3 1/2 kilograms of heroin under count 26.

I have taken into consideration the testimony at trial, the presentence report which includes Mr. Zayas' prior criminal record, and a discussion at the presentence conference at which Mr. Landau, the government counsel and the probation officer had with me on September 15th, 1977.

Mr. Moss, is there anything that you wish to say with respect to Mr. Zayas?

MR. MOSS: The government has nothing to add to its comments last week at the presentence conference.

THE COURT: I should add, I think, one other matter that I have considered is the government's brief which was its presentence memorandum, which was filed.

Mr. Landau, do you wish to be heard?

MR. LANDAU: Yes, your Honor. Your Honor, I have spoken with my client and informed him of the fact that with yourself, Mr. Moss and myself, and the probation officer, we had a conference in your chambers that lasted approximately 45 minutes to an hour, during which time I outlined to your Honor many items on which I felt perhaps there should be given greater emphasis so that your Honor, in making your decision so far as sentencing, might have a greater awareness of those items.

I don't now intend to reiterate everything I said in that half hour or 40 minutes, but I would just once more point out to your Honor that so far as the trial testimony of approximately six weeks--and a great deal of that six weeks was the prosecution's case--there was basically only reference from two witnesses concerning my client, one of which was Raymond Rossy, who was one of the 3 key prosecution witnesses, as I saw it, who testified only about my client with reference to one meeting and sale of drugs--and that was all that he said about my client; Raymond Rivera, who was the second key witness, gave lots of information about lots of people--he mentioned that he had met with Martha Machado and William Cortes-Rios, who were the kingpins of this conspiracy, they had all mentioned that Domingo Zayas was down on money and they were going to do him a favor, and they were going to give him a break, were the words, to make a couple of dollars, and that as a result of that Domingo Zayas, to his knowledge, was involved with two trips to California where he brought drugs back. In essence, it appears in those circumstances that he was merely a courier.

Benito Cruz, the third key prosecution witness, testified at great length and did not in his direct examination say anything about my client, and as I suggested to your Honor during our conference, it is my feeling that if he had any sort of awareness of my client being involved with this conspiracy he would have mentioned it at the trial of the action--in fact, he did talk about on cross--I elicited from him information how he had been down in Puerto Rico over Christmas time and was with Fernando Gallardo--they had apparently been on their way to see one of their customers, they stopped off at Domingo's house where he was at--in fact, they drove him into town so that he could make a phone call, but if they kept their appointment with one of their customers, they definitely and specifically brought him back to his house and left him there.

That basically was the testimony, as I pointed out to your Honor.

We also discussed a little bit some of the prior convictions of my client, and I am sure that your Honor remembers what I said, and you read your notes in preparation of the sentence.

Your Honor, the decision is yours. I would only put forth again what appears in the probation report, so far as culpability and participation in that sense within this conspiracy, and it appears to me that assuming that Domingo Zayas was involved in the ways that he has been accused of, that his participation in this conspiracy has been at the bottom of the totem pole, and it would seem to me also that he, of almost all of the defendants, is the least involved in participation and as such the least culpable.

Now I expect that your Honor is going to sentence my client to a term of incarceration. As your Honor is aware, he is presently completing a term of incarceration on a State charge, and that is due to end in 1979, and I would just ask your Honor that whatever your decision is, so far as incarceration, that you would order that the same be running concurrently with the State charges.

THE COURT: Mr. Landau, I said that among the matters I considered in preparing for this hearing today was the charges of which the jury found Mr. Zayas guilty. I think I should also say that I regard these charges as extremely serious charges--I think I should make that very clear.

A whole community was victimized by the actions of the members of this conspiracy, and a jury has found that Mr. Zayas was a member.

On the question of degree of culpability, when you have an operation as large as this one, I am not sure that the degree of culpability really means very much. Mr. Zayas was found to be a conspirator, and he was found guilty of substantive charges. The specific substantic charge that he was found guilty of involved 3 1/2 kilograms of heroin, and I just do not see how the degree of culpability can minimize 3 1/2 kilograms of heroin which were infused into a community which was victimized by its presence.

I say that now because youmay want to respond.

MR. LANDAU: Your Honor, there are some who say that a little pregnant is completely pregnant.

I would simply put this to the Court, sir, in the unfortunate situation perhaps of having to decide what to do with all of these defendants for the purpose of sentencing--the law allows you great and considerable leeway in your judgment and in your discretion. What you are saying with reference to culpability is not inaccurate. However, I do think that there is a difference between a Fernando Gallardo who ran an organization like this, and inducted members for whatever reason, and oversaw the entire goings-on in the entire conspiracy, or a lieutenant below him who similarly conducted his business, and a man like Domingo Zayas who from the testimony of the prosecution's own witnesses was almost just thrown a bone because he needed some money and had just a little bit of interplay here.

That is not to condone what was done; that is not to excuse what was done, and that is not any basis for me to ask your Honor in any way not to give him a jail sentence or anything like that, but I do think that in sitting in judgment as you have done and as you have stated you must look at the entire perspective--a man's background, what he is charged with, and so forth--in any conspiracy case that count number 1 covers a lot of people and had to cover a person who rented a car as much as a person who pulled a gun inside of a bank. Then it is for your Honor to determine how much did a person do, what was their involvement, what was their intention with reference to their involvement.

There are books written on intention, and I think that a person's intention is also something which is of substantial effect with reference to how much the man was involved. I am not trying to minimize what had occurred but when I was talking about culpability I was not trying to becloud the subject but I was trying to clear it up a bit.

THE COURT: Thank you, Mr. Landau.

Mr. Zayas, do you wish to say anything in your own behalf or to say anything in mitigation?

THE DEFENDANT: No, sir.

THE COURT: Mr. Zayas, the sentence of the Court is that it is ajudged that on each of count 1 and count 26 you are committed to the custody of the Attorney General or his authorized representative for a term of 15 years. These sentences are to run concurrently with each other and concurrently with the New York State sentence which you are currently serving from the date of the writ in this action.

There is also imposed a special parole term of six years in addition to the term of imprisonment.

MR. MOSS: Your Honor, if I may, I believe the Court should advise Mr. Zayas of his right to appeal.

THE COURT: Yes. Mr. Zayas, you have a right to appeal from this judgment of the Court, and if you request it, the Clerk of the Court will prepare and file immediately a notice of appeal, or your attorney may file a notice of appeal for you.

THE DEFENDANT: Yes.

THE COURT: Mr. Landau, will you file a notice of appeal for him?

MR. LANDAU: Yes, sir.

THE CLERK: For sentence, Luis Nunez-Ramos.

MR. KRIEGER: May it please this Honorable Court, I hadinitially responded in the negative, that we are not ready for sentencing. We have a motion that is presently pending, and then there will be an additional application, depending upon how your Honor rules.

THE COURT: Very well; I will hear you. What is your motion?

MR. KRIEGER: I have submitted a memorandum of law, your Honor. I had set forth what I felt to be the relevant argument initially when your Honor entertained my application for withdrawal of a juror and the declaration of a mistrial.

All that has happened, I submit, since the initial occurrence has been a re-reading of the transcript, and the narration as I had initia[illegible]icated it to your Honor was correct.

I submit that it was as horrific as if I had put my own integrity, whatever it may be, before the jury and told the jury that "If you believe me you will believe my client's innocence." It is improper; it is a matter which has been repeatedly condemned by the Court of Appeals.

Years back the government would "submit their own opinion as to the culpability of the defendant". The judge will state that the danger could be reduced if it were analogized and if the government would simply state "I suggest that you find that the evidence clearly indicates the culpability of the defendant." But I do not recall, although I must state I have oftentimes heard prosecutors boast that they are very much tempted to say to a jury, "If you believe I have done anything improper, return an acquittal." But I fail to see the basis of the justification, the provocation, the necessity for such an emotional outburst in this particular trial.

Now the government has contended "We did not do anything wrong, but even if we did do something wrong we were provoked."

That is naturally playing both sides of the street, but I can only say one thing: I gave no provocation, and I never committed any impropriety with respect to the government. Whatever Mr. Mendez did he did alone. It would absolutely defy credibility if there was a Tinkers-Evans-Chance concept whereby I would have Mr. Mendez make an emotional speech, and I do nothing, and then we would wait for Mr. Moss to make an emotional outburst so that your Honor would favorably entertain a motion for a new trial. It would defy credibility for such a thing to come into being.

Now the government is going to say "I daresay, what difference does it make? The weight of the evidence was overwhelming, and the indicia of the enormity of the evidence is that the jury returned a verdict of guilty against this defendant as to every count."

And the answer might very well be that they felt that the passionate plea of the Assistant United States Attorney as to his own integreity might have been a vital element with respect thereto.

I am very much concerned about this because I am apprehensive as to what is going to happen if it goes up to the 17th floor. I have seen too many observations and too many opinions wherein the government is chastized and then there is a bootstrap operation and they say "Well, it doesn't make any difference because we think that the evidence was sufficient to support a verdict".

Now I tip my hat whenever I go to the 17th floor, but no judge in this Circuit can sit on a trial with a jury, and no judge can substitute his opinion as to what should warrant a guilty verdict in place of the 12 ordinary Americans who have so determined.

I submit, your Honor, it is a serious matter; it was made with considered thought when I made the initial application. I submit in retrospect it has greater validity, and I renew my application for the withdrawal of a juror and the declaration of a mistrial.

THE COURT: Mr. Moss.

MR. MOSS: Your Honor, Mr. Krieger has at least tacitly admitted that Mr. Mendez made excessive comments in the course of his summation which may have opened the door.

THE COURT: I don't think that that is the thrust of what he said. I think the thrust of what he said was that whatever Mr. Mendez did he did not do it.

MR. MOSS: That is correct, and that is the point I intend to address.

I think it must be clear that in a multi-defendant trial one defendant may not reap the benefit of the argument or evidence presented by a co-defendant, and submit the case to the jury in the hopes that that argument or that evidence will result in an acquittal, and then following the verdict of guilty turn around and disassociate himself from the evidence or the argument or the conduct of a co-counsel or co-defendant and say "But I didn't do that".

The government must respond to the arguments that are made by all the defendants in a multi-defendant trial, and all of the arguments that are made by defense counsel inure to the benefit, in most instances, of all defendants, and in this case I submit that many defense attorneys in their cross exam nation and in some of the summations suggested quite clearly that government witnesses were programmed. Mr. Mendez went so far as to suggest a scenario in which one agent put into Ramon Rivera's head the name of Angelo Roche and the circumstances under which Roche and co-defendant Jose Velasquez associated together.

Now I argued at the trial and as argued in this motion in response to Luis Ramos' and Orlando Machado's motion based in this point, and I do not intend to cite the transcript or to argue this points; your Honor denied the same motion at trial after long argument and careful consideration, and if my recollection is correct after having had the pertinent portions of the summations re-read to your Honor. The government submits that your Honor's ruling was well reasoned and considered and appropriate at trial, and is no less so here.

The government submits that the motion on behalf of Luis Ramos should be denied.

MR. KRIEGER: With the Court's permission, prior to your Honor making a ruling, I would like to make one thing clear: There is no conspiracy as between co-counsel for the defense; there is no association as between counsel for the defense save that we will have coffee together. I wasn't in consultation with Mr. Mendez at any time throughout the trial, save the usual amenities. I wasn't interested in his client, and I daresay he is not interested in my client.

According to the government we are responsible for everything that anyone else does, except that we don't share in the fees, which is ludicrous. When the

Assistants get out into private practice and they do any criminal work, they will note that there is a tremendous amount of conviviality, but nobody was helping me with my defense, whatever it may have been, any more than was I helping them with theirs. We are all together simply because the government put us together.

THE COURT: All right, Mr. Krieger, I deny your motion. We did have an extended discussion of this at the time of summations during trial. I dealt with the problem raised by counsel in my charge, and I am persuaded that there was not prejudice stemming from anything that was said by the government in its summation, which would justify any action other than a denial of your motion.

You said you had another thing to say.

MR. KRIEGER: Yes. If your Honor please, at this time I move to strike from the government's memorandum and ask that it be deleted from consideration by the Court all reference in the government's sentencing memorandum as to what other judges have done in other narcotics conspiracies. I think it is basically comparing apples and peaches. It becomes highly prejudicial for the government to say to this Court "Mr. Tramunti got this and Mr. Moten got so many years, therefore

Mr. Nunez should get x, y or z."

I submit it is of no probative value; it is highly prejudicial. I tried this case before your Honor. I did not try this case before a committee of your colleagues, and I am very much concerned with the propriety of such procedure.

I submit, your Honor, that I am apalled. What would the government do--would the government submit such a memorandum if this case were before Judge Weinfeld? I think that to put the question answers it.

This Court is going to make whatever determination that seems to it, and to it alone, fit and proper.

Whatever happened in some of those other cases and on other matters is, I submit, completely lacking in relevance.

I am disturbed by an additional aspect of sentencing, and that is apparently the entire concept which may very well come into being of uniformity on sentencing. Some commentators have become awfully astonished that defendant X, when he appears before Judge Y, gets less punishment, but defendant Z, when he gets before Judge W, gets something else.

Each case must be dealt with on the merits. I submit that what we have here is the government endeavoring to create a mold, a pattern, a uniformity of sentencing which it ill-behooves itself to do and which I submit demeans the Court. This Court will make whatever determination it sees fit on the record, not what some other judge did in some other indictment, at some other place, and I submit that the government prides itself on making no recommendation, yet it submits a plethora of judgments of convictions as to other matters, and I just don't think it is proper, your Honor, and I don't think that your Honor ought to consider it.

THE COURT: I do not think I will ask the government to respond on this.

I requested Probation to give me a report on sentencing in narcotics cases in this district. I take it that the government's sentencing memorandum was a response to the request that I made to Probation, and I did not make the request because I intended to be guided by what other judges had done. I did, however, want to know what other judges had done in preparing for sentencing here, and it has been useful to me only insofar as it has shown me what other judges have done in other cases.

I agree with you, Mr. Krieger, that every case should be determined on its own merits. The parameters have been set by Congress, and the seriousness of the offense has been legislatively determined by Congress.

At the present time within the parameters set by Congress, sentencing judges have a great deal of discretion, and I don't think any one who is interested in uniformity of criteria with respect to sentences insists upon uniformity of sentence, and I would hope that they do not.

I think I agree with a great deal of what you said but I want to make it clear that while I did not expect this information to be coming from the government by way of sentencing memorandum, I did specifically request this information from Probation.

I take it, Mr. Moss, you can tell me whether this is so or not--the inclusion of that material within the government's sentencing memorandum was because the government had information which Probation did not have.

MR. MOSS: That is correct, your Honor. Mr. Robert Ohannesian of the Probation Office informed me of your Honor's request of Probation, that such a compilation be prepared. Since we had done that in one previous trial, to my knowledge, I undertook to update that prior compilation and submitted it as part of the government's sentencing memorandum.

THE COURT: Mr. Krieger, I will not rule out that part of the government's sentencing memorandum, but I assure you that it has not governed my determination with respect to sentence. It has provided me with information which I wanted as one of a great number of predicates in deciding on what the sentences should be.

MR. KRIEGER: Yes, your Honor.

THE COURT: Is Mr. Nunez-Ramos ready for sentence?

MR. KRIEGER: Yes, sir; at this juncture, your Honor, we are.

THE COURT: Before I hear from you on the sentence proper, it might be very well for me to briefly review what I have benfore me with regard to his sentencing.

MR. KRIEGER: Yes, sir.

THE COURT: He was convicted on three counts: the conspiracy count involving a conspiracy to violate the narcotics laws; count 7, which charges him with intentionally and knowingly possessing with intent to distribute a quarter kilogram of heroin; and count 18 which charges that he, Jose Luis Iglesias intentionally and knowingly distributed and possessed with intent to distribute 2 1/2 kilograms of heroin.

Now I have considered the presentence report, the testimony at trial, Mr. Nunez-Ramos's prior criminal record as reflected in the presentence report, the discussions which we had at a presentence conference that you, Mr. Krieger, Mr. Moss and Mr. Ziegler, the Probation officer and myself held on September 15th, and various communications which I have received.

There was a letter dated July 15th from the defendant.

There was a letter from Ramos Plazza, dated August 17th; one from David Fortuino, dated August 17th; one from Dionicio Cruz, dated August 16th; one from Mrs. Colon, dated August 23rd; and then there was a letter to the defendant from a man whose name I think was Riuccia, dated August 23rd with respect to prospective employment.

I have not considered, because I understand it has been withdrawn, an affidavit which was submitted by the defendant, prepared by another defendant who pleaded guilty.

Mr. Krieger?

MR. KRIEGER: Thank you, sir.

If your Honor please, I now assume the role of a supplicant. I submit that there are two errors in the presentence report. One is with respect to the amount of the value of the defendant's property in Puerto Rico. The defendant tells me that in 1971 he and his wife bought a house for $14,000, which was unfinished. It was apparently sold by the government in the form of sweat equity, and they completed the physical construction themselves.

The house has been vacant and is vacant. I don't know where they got the value of $30,000, and suffice it to say the defendant informs me that nobody has offered to buy it.

Point number 2 with respect to the defendant's assets, not only is he indigent in this court but he has informed me that counsel has been assigned to represent him in his pending appeal in the First Circuit.

The defendant represents again that he is without funds. He has neither the position nor the capability nor the guile to amass a vast sum of money and keep it underground for the day hopefully when he might be able to utilize it.

As I have indicated to your Honor, it has all gone for wine and song and whatever else may have been the subject matter of the expenditures.

The trial fee of the Puerto Rican lawyer was his interest in a boat.

Now the defendant is presently serving a term of imprisonment arising from a narcotics transaction in Puerto Rico. The government, I daresay, will endeavor to say that that is a completely dissimilar act of law-breaking because that entailed cocaine, whereas the subject matter of the instant purported conspiracy was heroin.

I submit, your Honor, that they are all part of the generic sense of narcotics, equally as well precluded by the law.

I am concerned, obviously, as to what my client is going to receive, because irrespective of all the graciousness that we might hear at Bar association conventions and the statements of courts as to the adequacy and efficiency of counsel, the actual realities of life in the court room for one who partakes on a daily basis in the defense of those accused of crimes is, "What is my client going to receive?"

Now addressing myself to that particular point, your Honor, my client has already appeared to have, as what the government might claim, an affinity for punishment.

A judge of collateral jurisdiction in Puerto Rico has determined that for his participation he should receive 5 years in prison. I do not know what the judge knew at the time that he imposed the sentence. I have inquired of the Probation officer as to the Puerto Rican probation report, and it is most gracious and most charming but I would submit perhaps lacking in a goodly amount of substance.

When your Honor imposes punishment today--and that is exactly what it is--your Honor is going to punish him; it is not going to be the final ritual in the culmination of a judgment of conviction; it is going to mean how much time he is going to have to spend in a steel cage.

This man is vastly dissimilar from the individual who, according to the testimony, conducted various activities from a social club. His health has not improved. I have repeatedly requested and applied in person to the office of the Warden that he receive a special diet, that he receive special consideration--all to no avail.

I would most humbly suggest that irrespective of what your Honor may order--and the power of the Court is awesome--he is going to be treated in a fashion oblivious to an acute, serious chronic asthmatic condition.

The defendant is naturally in a position where irrespective of what he says, he is overwhelmed by the enormity of the plight that has befallen him. He is bewildered. He can look forward to naught but continued incarceration.

I beseech your Honor when imposing sentence to realize that in this vast spectrum of criminology which was involved before your Honor, those who were the keystones of this arch harm to the community have not received punishment--that in essence there was a fulfillment of the Southern District syndrome where the main architects of criminal conduct testify as against the lesser lights, and they are to an appreciable extent able to withstand punishment.

I respectfully disagree with my predecessor who stated that your Honor has the unfortunate job of imposing sentence. The defendant most respectfully considers himself very fortunate to have had a judge who has listened to what has been said on his part, who is aware of his judicial responsibilities, both to the community and to the defendant but who, above all, will see that justice and right be done.

Thank you, your Honor.

THE COURT: Thank you, Mr. Krieger.

Before I start, I should have asked Mr. Moss if he had anything to say.

Do you, Mr. Moss?

MR. MOSS: No, your Honor.

THE COURT: Mr. Krieger, I do I do agree with some part of what you said with respect to what may be an unfortunate circumstance, that some people who, on the evidence that was presented in this trial, seemed very guilty were not on trial and did not depend upon the verdict of the particular jury who sat in his case to determine their own future.

I also recognize that without witnesses, no trial could be had and no wrongdoers can be apprehended but I do not think the fact that other people, if on trial, would have been equally guilty on a more ambitious and more productive basis than this defendant is an appropriate reason to lessen what the very serious charges against this defendant would require.

MR. KRIEGER: Yes, sir.

THE COURT: Mr. Nunez-Ramos, do you have anything that you wish to say in your own behalf or in mitigation?

THE DEFENDANT: Yes, your Honor. First of all, I want to thank you for listening to Mr. Krieger during the trial.

Your Honor, I have a family out there (indicating to rear of court room)--and a son, and they are going through all this and I hope that you will take this into consideration in sentencing.

I am very sorry for all the inconvenience I have caused you and the United States Government.

THE COURT: Thank you, Mr. Nunez-Ramos. I am not concerned about inconvenience to myself and the United States Government; I am very deeply concerned about the havoc which your activities played on your community. It was basically your own community that suffered from the activities that you and your co-defendants were going through.

It is the judgment of the Court that on each of count 1, count 7 and count 18, you, Mr. Nunez-Ramos, are committed to the custody of the Attorney General or his authorized representative for a term of 15 years. These sentences are to run concurrently with each other and concurrently with the sentence which you are now serving as a result of the conviction in Puerto Rico on February 1[illegible], 1977 from the date of the writ in this action.

There is also imposed a special parole term of six years in addition to the imprisonment.

Mr. Nunez-Ramos, you have a right to appeal from this conviction. Your attorney will file the appeal for you, or if he will not, or you don't want him to, the clerk will file a notice of appeal for you.

Will you file the notice of appeal, Mr. Krieger?

MR. KRIEGER: Yes. Good day, your Honor.

THE COURT: Thank you, Mr. Krieger.

Court will take a five minute recess.

(A short recess)

THE CLERK: For sentence, Carlos Rivera-Santiago.

MR. CUNIFF: Your Honor, as I indicated to you at the sentencing conference last week, the defendant Carlos Rivera-Santiago is presently in Bellevue Hospital. A biopsy is to be performed tomorrow morning, and the indications are that he will be hospitalized for approximately 12 days.

My application is to adjourn this matter.

THE COURT: Mr. Moss?

MR. MOSS: Well, I am not sure that there is very much that the Court can do but grant the application. I would have hoped that perhaps Mr. Cunniff could have told us this earlier so that we could have had an opportunity to confirm it by phone call with the doctor at Bellevue.

THE COURT: You don't know yet whether he will be out tomorrow or two weeks from tomorrow.

MR. CUNNIFF: No, I do not. I am going there this evening.

THE COURT: Mr. Cunniff, will you be in touch with Mr. Moss tomorrow morning and let him know what the report is so that Mr. Moss can contact me and make arrangements.

MR. CUNNIFF: I will, your Honor.

THE COURT: Thank you.

THE COURT: We will adjourn the sentencing of Mr. Santiago, and we will fix a sentence date immediately after Mr. Cunniff informs Mr. Moss what the situation is.

THE CLERK: For sentence, United States v Jose Velasquez.

MR. MOSS: The government is ready to proceed, your Honor.

MR. LINN: The defendant is ready to proceed.

THE COURT: Mr. Lynn, before you come up, let me just briefly outline the matters which I have considered in preparing for sentencing today.

One is the charges on which Mr. Velasquez was convicted--count 1, which charges a conspiracy to violate the narcotics laws; count 5 which charges that Mr. Velasquez intentionally and knowingly possessed with intent to distribute a quarter kilogram of heroin; and count 9 which charges that he intentionally and knowingly possessed with intent to distribute a quarter kilogram of heroin.

I have considered the testimony at the trial, and I have considered the presentence report which was reviewed by counsel, including Mr. Velasquez's prior criminal record, and I have considered the various matters that we discussed at the presentence conference among you, Mr. Linn, Mr. Moss, Mr. Ziegler, the Probation officer and myself on September 15th.

Mr. Moss, is there anything that you would wish to say with respect to Mr. Velasquez?

MR. MOSS: The government has nothing to add in addition to the remarks in the sentencing memorandum and the remarks conveyed to your Honor at the presentence conference last week.

THE COURT: Thank you.

Mr. Linn?

MR. LINN: Your Honor, Mr. Velasquez, as you know, is currently in jail on a State conviction for the sale that came out during the trial and brought out in detail. However, it is my feeling that that conviction and the time element involved were so closely related to the charges here and the conspiracy here, and the sentencing that was given there, which was a severe one and requires incarceration and a long parole period afterwards is so connected here that that should be given some consideration.

Your Honor, I would like to point out and reiterate what Mr. Krieger said about the trial testimony. The trial testimony here on which the conviction was based was from the major lieutenants of Mr. Gallardo who, by the trial testimony, was the major figure in this trial--and what happened to the lieutenants.

Granted, as your Honor stated, there has to be witnesses in the case, but these witnesses--Benito Cruz, Herman Rosa, Raymond Rivera, Raymond Valentine--where are they? Basically, your Honor, they are free or their freedom is coming within a very short time.

Your Honor, their role in this conspiracy--Gallardo, of course, had the paramount role; the major lieutenants' role, the amount of heroin they distributed so far outweighs what Mr. Velasquez is charged with--

not that what he is charged with and convicted of isn't a serious offense, but it is so far outweighed by the hundreds of pounds that were distributed by these key men.

Your Honor, sentence is an attempt to apply a just punishment to a crime and to provide a deterrent effect and to induce respect for our system and our laws.

I realize, your Honor, that there is nothing you can do to these major lieutenants who are now free, but to gain respect for the law, to have a man appreciate the significance that if he commits a crime he will be punished for it, this flies in the face of what happened with these men because what did they learn from this-- not only that they will be punished and severely, but even if you commit a much more serious crime, what can happen to you? You can testify for the government and get your freedom.

That is unfair, and I am sure Mr. Velasquez will get a jail term and these men will think about the crime they are convicted of, and they will also think about Raymond Rivera who sold maybe 100 pounds of heroin, and Benito Cruz, who sold multi-hundreds of pounds, and the Herman Rosas and the Raymond Valentines.

Your Honor, there is no question that the crime charged here is serious, but there is a question about the level of the conspirator. The government, in their presentence memorandum listed major conspirators and lesser ones, but they did not differentiate level. We can look at the sentencing and try to judge the level, and certainly that was done. Mr. Velasquez wasn't a major participant in this conspiracy. He wasn't in Puerto Rico. He wasn't a member of the policy board. What was he? He grew up in a poor community. Granted your Honor's statement that this drug is a plague on that community--there is no question about that--but, your Honor, when you look into the community standards, when you actually go into the community and meet the people, you find out that the younger people growing up do not make this differentiation. They do not have that moral sense, and what they see is is a way out of the poverty in which they have grown up, and the way out is get involved in this criminal type of activities.

I am not arguing that this isn't a wrong, that a heroin sale isn't a heinous crime; I am arguing that the Velasquezes weren't in a position to gain a proper, moral perspective on what they were doing. Their actions were semi-acceptable in the community in which they lived, and still are. Maybe that should be taken into consideration, your Honor--the moral perspective from which these men look at what they did and what Mr. Velasquez looks at what he did. I am sure until th. day, until he learns the sentence imposed, the full weight of his criminal activity wasn't judged properly by him.

Your Honor, the other attorneys have brought out several factors which I concur in, and I have stated to you at our presentence conference and I reiterate, this is a young man; he hasn't had a chance to gain a proper perspective. He has some standards of morality. He has a wife and two children. He has been with this woman for 11 years--granted it is a common-law relationship but it shows that some stability is possible.

The report says he is a good father--I don't think there is any question about that.

What I am asking your Honor is to permit some daylights in this man's life, to permit some degree of rehabilitation, but there is no way in a steel cage until he is a middle-aged man--and granted its deterrent effect might be effective, its rehabilitation effect would be nill.

I question the deterrent effect not on these men but on the community, and that is what is significant.

I don't think the deterrent effect on the community will be significant--not as long as the poverty exists there, not as long as the economic conditions remain the same.

Your Honor, what I am asking is to give this man a chance.

Thank you.

THE COURT: Thank you, Mr. Linn.

Mr. Velasquez, is there anything which you wish to say to the Court in your own behalf or in mitigation of sentence?

THE DEFENDANT: No, your Honor.

THE COURT: Mr. Velasquez, the sentence of the Court is as follows:

It is ajudged that on each of count 1, count 5 and count 9 you are committed to the custody of the Attorney General or his authorized represtntative for a term of 15 years.

These sentences are to run concurrently with each other and concurrently with the sentence which you are presently serving in New York State from the date of the writ in this case.

There is also imposed a special parole term of six years in addition to the term of imprisonment.

Mr. Velasquez, you have a right to appeal.

Your lawyer can file the appeal, or if your lawyer does not the Clerk of the court will file one.

Mr. Linn, will you file a notice of appearance?

MR. LINN: Yes, I will.

THE COURT: Thank you.

THE CLERK: For sentence, Fabian Rodriguez.

THE COURT: Is Mr. Rodriguez ready for sentence?

MR. MITCHELL: Yes, your Honor.

THE COURT: Mr. Mitchell, let me just review what I have considered with respect to Mr. Rodriguez. The counts on which he was convicted or found guilty were counts 1, 20 and 22--count 1 involving the conspiracy to violate the narcotics laws; count 20 charged that Mr. Rodriguez, Fernando Gallardo and Gilberto Torres intentionally and knowingly distributed and possessed with intent to distribute one quarter kilogram of heroin; and count 22 charged that Mr. Rodriguez and Gilberto Torres intentionally and knowingly possessed with intent to distribute a kilogram of heroin.

I have considered the testimony at the trial, the presentence report, including Mr. Rodriguez's prior criminal record, the matters discussed in the presentence conference which Mr. Mitchell, Mr. Moss, Mr. Ziegler, the Probation officer and I held on September 15th.

I have also received two communications--one from Miriam Arias, dated July 25th, and a letter dated July 26 from some 21 members of his community.

Mr. Moss, is there anything that you wish to say with respect to the sentencing of Mr. Rodriguez?

MR. MOSS: No, your Honor.

THE COURT: Mr. Mitchell.

MR. MITCHELL: Your Honor, I believe in the presentence conference and in the probation report itself you covered most of what I would ordinarily say. However, for the benefit of the defendant who was not present and who has not read the probation report, I want to say that you have before you a 27-year old young man, married, and I would say this in contrast to some of the others, with a fairly good work record--even in Puerto Rico his work record was good. When he came to the United States, he worked in the United States Post Office. You might say that he also moonlighted in narcotics for the government, but he did work in the Post Office--and there is no question that he put in a full day's work on each and every day right through the period, including arrest and the gun which we discussed when he was placed on probation--and the Post Office continued him in his employment right up until his arrest for the sale in the State in November, I believe, of 1975.

That, as your Honor will recall, was a similar transaction in this case, although if the government had pressed hard enough they could have made it part and parcel of the conspiracy because it lies within the period of the conspiracy--and Torres was the one who handled the matter of 3 or 4 ounces which was involved.

The defendant was sentenced at the end of April, 1977, to a term of 15 years to life on that particular similar transaction.

I cannot say to your Honor that you should take it into consideration because it was only offered as a similar transaction, but I might say that is quite a punishment for an individual who has practically a clean record to have received.

I am going to ask your Honor to take into consideration the fact that from what I read in the probation report it is a fairly good one. It is simply the type of crime that this defendant has been convicted of. It is true that I do not know--there is always that missing page where we get an idea of the Probation Department as to the minimum and maximum that they would suggest to the Court, but I was hopeful they might make a suggestion so that your Honor would depart from that sentence which has been received by the other defendants up to now of 15 years.

It is true that he is doing 15 years in the State, but if your Honor were to give him something less he would at least feel that some consideration has been given to him for the good part of his life--and I think the Court should consider the good with the bad.

I just want to say that I would like to join in Mr. Krieger's motion, which was denied by your Honor, and simply add to that just one factor without asking your Honor to change your decision, which you have a right to--I want to call your Honor's attention to the fact that our Circuit Court in this District, just prior to Sperling, and right up to the Moten decision which came down the other day, has been very critical of the government joining more than two or three defendants in these voluminous conspiracies and telling them each time that there will come a time when what they have done will be taken into consideration by the Circuit Court in reversing the conviction because of that, and I think that in this particular case where one defendant causes something to occur which reflects on the other defendants is that stage.

I just wanted to call that to your Honor's attention.

THE COURT: Well, my ruling on that motion is that it remains.

I am not sure that I understand what you meant, Mr. Mitchell.

MR. MITCHELL: Well, I am saying that the Circuit Court has said that when you join all these many defendants it is something that they frown on, and they have indicated time and time again that there will come a time when, because of the fact that they frown on this, something which would ordinarily not be a cause for reversal may be a cause for reversal.

My humble opinion is that just that situation arose in this case, that with one attorney making a remark and the District Attorney answering him, that your Honor's ruling, proper under the circumstances, may affect the other defendants.

THE COURT: I see what you mean. I think, incidentally, that there was more than one attorney who had something to say in summation which could have been the predicate for the government's response.

MR. MITCHELL: Yes, but there is always the one that said nothing.

THE COURT: Mr. Rodriguez, do you wish to say anything in your own behalf before sentence is imposed upon you?

THE DEFENDANT: No.

THE COURT: The sentence of the Court, Mr. Rodriguez, is as follows:

It is ajudged that on each of counts 1, 20 and 22 you are committed to the custody of the Attorney General or his authorized representative for a period of 15 years.

These sentences will run concurrently with each other and concurrently with the sentence imposed on April 29, 1977, from the date of the writ in this action.

There is also imposed a special parole term of 6 years in addition to the term of imprisonment.

Mr. Rodriguez, you have a right to appeal, and your attorney may file the notice of appearance or the clerk of the Court will do it.

MR. MITCHELL: I will file it, your Honor.

THE COURT: Thank you.

THE CLERK: For sentence, Antonio Morales.

MR. STOKAMER: Defendant is ready for sentence.

THE CLERK: Shall I swear the interpreter, your Honor?

THE COURT: Yes.

(Whereupon Mr. Richard Schoen was sworn as Spanish interpreter by the Clerk)

THE COURT: Let me just review what I have considered with respect to the sentencing of Mr. Morales.

In the first place, I have considered the charges with respect to which he was found guilty.

Count 1 charges a conspiracy to violate the narcotics laws.

Count 15 charges that in September of 1974 Mr. Morales did intentionally and knowingly possess with intent to distribute one quarter of a kilogram of heroin.

I have considered the testimony at the trial, the presentence report, including a report of Mr. Morales' prior criminal record, and the matters which were discussed at a presentence conference at which Mr. Stokamer, the government attorney, the Probation officer and myself held on September 15th.

Mr. Moss, do you wish to be heard?

MR. MOSS: No, your Honor.

THE COURT: Mr. Stokamer?

MR. STOKAMER: Yes, yo[illegible] Honor. Your Honor is no doubt familiar with the background of my client, Mr. Morales, but if I may I would like to paraphrase some of it and put it in a light which your Honor may consider.

As your Honor knows, Mr. Morales grew up in the worst of poverty. He was one of 11 or 12 children. His parents separated when he was very young, and he was raised by himself and his sister, and he never had it easy.

I think the probation report which your Honor reviewed indicated many jobs that Mr. Morales worked at. It also appears both in the testimony at the trial and from his work history as reflected in the probation report that Mr. Morales' involvement in the sort of activity for which he stands before your Honor now does not go back many years, as is the case with many, many other defendants who were convicted of conspiracies to sell narcotics but started relatively recently.

Your Honor's probation report indicated that Mr. Morales was working steadily as a window washer up until an accident that he had in 1974, and that before that he was always employed in difficult laborious type of jobs.

I am not condoning what he was found guilty of--not at all--and both Mr. Morales and I appreciate and understand the seriousness and the significance of what he stands convicted of and what the jury found him guilty of.

Mere poverty is no excuse for criminal activity but I think your Honor might consider how and why Mr. Morales got involved.

I would also ask your Honor to consider the fact that Mr. Morales is presently serving a term of one year to life for activity which was, in the government's own view, part of this very conspiracy for which he stands convicted now.

It was within the time limit of the conspiracy--indeed, it was part of the government's proof--the facts to which he pleaded guilty were part of the government's proof in this very trial.

I understand and I appreciate the value of the deterrent effect of the sentence, especially in a case such as this one which involved activity by many people over a course of time.

I also appreciate, as does Mr. Morales, the fact that deterrent effect should be for the community or for those others who might be inclined to commit similar activity, as well as for the particular defendant himself.

The sentences which your Honor has been imposing and which other courts have imposed certainly have a great deterrent effect.

Mr. Morales also realizes that this is not the type of case where even in the best of circumstances he could hope for probation or a very short jail sentence. Mr. Morales, however--and I ask your Honor to consider this--has been deterred; he is serving a one-year to life, and hopefully had he not had this case he would have the prospect of fairly early parole.

In addition to the deterrent effects I would ask your Honor to consider the fact that Mr. Morales has already been in jail for the same activity for which he stands before your Honor now for a year. He has been deterred not only by the jail sentence previously imposed and the case on which he now stands before your Honor, but also by his wife, who is in court today as she has been every day of this trial, and indeed as she was present at almost every court appearance on his previous conviction. He has never served any time prior to the 1973 conviction; indeed, he has never been convicted of any crime before that. His wife, Andrea Gomez, is and has been over the past years a very stabilizing influence upon him, a very good influence upon him.

Regardless of your Honor's sentence, she has, in my judgment, helped him to realize that coming in and out of jail--going in and out of jail is no way to raise his children, and no way to lead his life, and I suspect that whenever he is released this Court or any court will not be seeing him on criminal charges again.

I would only ask your Honor not to impose a severe jail sentence but to temper--I was inclined to say "justice with mercy". However, I hesitate because I do not think it would be just to impose a sentence of 15 years on Mr. Morales. I would ask your Honor not to impose a severe jail sentence in this case. I don't think the case warrants it, I don't think the circumstances of Mr. Morales warrant it.

Thank you, your Honor.

THE COURT: Mr. Morales, is there anything you wish to say in your own behalf or in mitigation of punishment?

THE DEFENDANT: No, sir.

THE COURT: The sentence of the Court is as follows:

It is ajudged that on each of count 1 and count 15

Mr. Morales is committed to the custody of the Attorney General or his authorized representative for a term of 15 years. These sentences are to run concurrently with one eanother.

There is also imposed a special parole term of 6 years in addition to the term of imprisonment.

MR. STOKAMER: May I request or inquire as to whether Mr. Morales' sentence will be concurrent with any time that he spent in Federal custody and/or State custody?

THE COURT: Yes, the sentences will also run concurrently with his sentence that he is presently serving on Stage charges from the date of this writ in this action.

Mr. Morales, you have a right to appeal. Your attorney may file a notice of appeal for you, or the Clerk of the Court will file a notice of appeal for you.

Mr. Stokamer, will you file the notice of appeal?

MR. STOKAMER: Yes, your Honor, I will.

THE COURT: Thank you.

THE CLERK: For sentence, Anthony Rodriguez. Both sides ready?

MR. MOSS: The government is ready.

MR. FIGUEROA: Ready for the defendant.

THE COURT: Mr. Figueroa, before you start, let me review or give you what I have considered in preparing for sentence today.

I have considered the charges, which are count 1, the conspiracy charge to violate the narcotics laws, and count 27 which charge Mr. Rodriguez, together with Herminio Gutierrez intentionally and knowingly distributed and possessed with intent to distribute a quarter kilogram of heroin.

I have also considered the fact that a second offender information has been filed with respect to Mr. Rodriguez.

I have considered the testimony at the trial, the presentence report, the presentence conference which you, Mr. Figueroa, Mr. Moss, Mr. Ziegler, the Probation officer and I had on September 15th, and I have considered the fact that Mr. Rodriguez is alleged to have or to have a drug addiction.

Do you wish to be heard at this point, Mr. Moss?

MR. MOSS: Not on the merits on the question of sentence. The government will rest upon whatever it had to say last week at the presentence conference.

I would like to point out to your Honor that I believe the first order of business should be to have the defendant either admit or deny the allegations contained in the second offender information.

THE CLERK: Do you have the second offender information?

(Mr. Moss hands to the clerk)

THE COURT: Mr. Figueroa, is Mr. Rodriguez prepared to admit or deny the allegations of the second offender information?

MR. FIGUEROA: Yes, your Honor, he is.

THE CLERK: Are you Anthony Rodriguez?

THE DEFENDANT: Yes.

THE CLERK: Robert B. Fiske, Jr., the United States Attorney for the Southern District of New York, does accuse the defendant above named, who is also in indictment 72 Cr. 382, of having been previously convicted as herein below described, said defendant on or about the 23rd day of April 1973 in the Southern District of New York, was duly convicted of a violation of Title 21 United States Code, Section 841(a)(1), relating to the distribution of narcotics.

Do you admit or deny this information? Do you admit being the person that was convicted in this information?

THE DEFENDANT: Yes.

THE CLERK: You do.

THE DEFENDANT: Yes.

MR. FIGUEROA: Yes, your Honor. I would like to thank the Court for giving me the opportunity of expressing my views at the presentence conference that was held last Thursday in the Court's presence and in the presence of the two prosecuting attorneys.

I think I said most of what I would have said at this time at that conference.

However, I would like to repeat very briefly, if the Court please, some of the more outstanding factors which I think are most noteworthy and in consideration of sentence as to Anthony Rodriguez.

If your Honor please, of course I would maintain and say that Anthony Rodriguez, as far as this conspiracy was concerned, was perhaps one of the most unsophisticated members of the conspiracy, and that his involvement may have been active but certainly not on a grand scale; and so far as volume was concerned that it was towards the minimal side of the spectrum.

In many ways Anthony Rodriguez I believe was one of the persons that was perhaps victimized or not exploited by the presence of drugs in his community; I think he was made use of by others as much as even some of the victims.

As you know, your Honor, Anthony Rodriguez was an addict at the time of his apprehension, and continues to be an addict--at least he was on a methadone program for some months prior to his arrest on this very charge.

The facts underlying that addiction have been made known to the Court during the trial, and I do not think it is necessary to go into them at this time.

I also mention to the Court that in one of my initial appearances with Anthony Rodriguez I broached the matter of making a bail-reduction application on his behalf, and he informed me at that time, your Honor, that he did not wish to proceed to reduce the bail because, in sum, what he was telling me was that he really preferred to stay or remain where he was--and I think that perhaps was a sad commentary on Anthony Rodriguez in these circumstances and in the community from which he comes--and perhaps it was indicative of his troubles. His problems were drugs, not only on the criminality phase of it but also as an addict.

I think perhaps in Anthony Rodriguez's eyes his jail is not a jail which is made of bars, but a jail with the outside world--that society is his jail and is as vigorous as any jail could be.

For that reason, your Honor, I think if the

Court deals severely with Mr. Anthony Rodriguez I feel there comes a time when an attorney has to take an audacious stand in behalf of his client. I feel that a severe sentence to Anthony would largely be wasted. I think he is, at this present juncture in his life, cognizant of what he has done; I think he is at a point where he can make a stand and see that there is no future in what he has been doing, and I think this is perhaps demonstrated by the fact that he has never been in trouble while on probation--at one point he was on probation for 3 years, and during those 3 years he had no encounters whatever with the law.

So I would ask your Honor to render whatever mercy the Court deems fit, to take into account the fact that Anthony Rodriguez stands before you a product not entirely of his own choosing, a product that our society made and bred.

He stands before you ready for sentence at this time.

Thank you.

THE COURT: Thank you, Mr. Figueroa.

Mr. Rodrigues, do you wish to make a statement in your own behalf or in mitigation?

THE DEFENDANT: No, sir.

THE COURT: The sentence of the Court is as follows:

It is ajudged that Mr. Rodriguez is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the maximum period authorized by law, and for a study as described in Title 18 of the United States Code, Section 4205 (d).

The results of this study are to be furnished to the Court within 3 months, unless the Court grants further time not to exceed 3 months.

The defendant thereupon shall be returned to the Court, and the sentence of imprisonment hereby imposed shall be subject to modification in accordance with Title 18, United States Code, Section 4205 (c).

There is also imposed a special parole term of 6 years.

I intend to suggest in this connection that the Attorney General give special attention to the problem of Mr. Rodriguez's apparent drug addiction presently and in the past.

Mr. Rodriguez, you have a right to appeal from this sentence. Your attorney may file a notice of appeal or the Clerk of the Court will do it for you.

Do you plan to file a notice of appeal?

MR. FIGUEROA: I do, your Honor.

THE COURT: Now I am not sure, gentlemen, whether with respect to this sentence the time for appeal runs from now or from the date that Mr. Rodriguez is returned to Court and a decision is made with respect to possible modification.

MR. FIGUEROA: I will ascertain that, your Honor--thank you.

THE COURT: Very well. Do you know, Mr. Moss?

MR. MOSS: No, I don't, your Honor.

THE COURT: Very well.

Court is in recess.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRCT OF NEW YORK

United States of America

-v-

Angelo Roche,

Defendant.

77 Cr. 0100

New York, N. Y.
September 23, 1977
10 am
Room 128

Before:

Hon. Vincent L. Broderick,
District Judge.

APPEARANCES:

Robert B. Fiske, Jr., Esq.
United States Attorney;
James Moss, Esq.,
Assistant U. S. Attorney, of counsel

Teodoro Mendez Lobron, Esq.,
Attorney for defendant.

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THE CLERK: For sentence, United States v Angelo Roche.

MR. MOSS: The government is ready.

MR. MENDEZ: Defendant Roche is ready.

THE COURT: Before we proceed with the sentencing and before I hear from counsel, I wish to review the matters which I have taken into consideration in preparing for the sentencing.

First of all, I have taken into consideration the charges with respect to which Mr. Roche was convicted. Count 1 of the indictment charged a conspiracy to violate the narcotics laws; count 4 charged that Angelo Roche knowingly possessed with intent to distribute a half a kilogram of heroin; and count 8 charged that Mr. Roche knowingly possessed with intent to distribute a half a kilogram of heroin.

I have also taken into consideration the testimony which I heard at trial, the presentence report which has been reviewed by counsel for the government and for Mr. Roche by Mr. Mendez, which includes Mr. Roche's prior criminal record.

I have taken into consideration the matters discussed at a presentence conference which was held yesterday among Mr. Mendez, Mr. Moss, the Probation officer and myself.

I have also taken into consideration information which I have received in the sentencing memorandum, which was filed by the United States Attorney and which was discussed at the presentence conference yesterday; and let me just summarize in substance what that information was.

It was that two undercover police detectives participitated in various heroin transactions in New york and in Chicago with associates of Mr. Roche--persons who said that they were associates of Mr. Roche; that the transactions involved quantities of heroin which ranged from half an ounce to 2 1/2 kilograms; that the detectives were told by one Vasquez that Mr. Roche ran the market for Mexican heroin in New York; that the negotiations that these undercover police officers participated in were carried on in Chicago, among other places, and in Chicago they were carried on at the home of Mr. Roche's ex-wife, Mrs. Colon; and that the Chicago conspirators told the undercover agents that they trusted Mrs. Colon because she had been married to Mr. Roche and that Mr. Roche carried on most of his Chicago heroin business at her house.

I also learned from the United States attorney that a meeting place or a headquarters for the heroin business in New York has been a bar known as the River Bend.

I had been informed by the Probation officer that Mr. Roche is presently awaiting a sentence in the New York State courts on a charge of criminal possession of a loaded run, to which he pleaded guilty, and I am notified that he was arrested on this charge in the River Bend.

Now this we did not discuss at our presentence conference yesterday because I learned that subsequent to the conference.

I have also taken into consideration the financial statement that appears in the Probation report.

At our conference yesterday Mr. Mendez pointed out that that financial statement was submitted to the Probation officer by Mr. Roche without Mr. Mendez' prior knowledge--at least that is what I recall he said--and that it was prepared in connection with an application for a bank loan in connection with the proposed construction of a motel.

Mr. Mendez' suggestion--I am not sure to what extent he carried it out but his suggestion was that these figures being submitted to a bank for the purpose of securing a loan from the bank may have been to some extent inflated.

I have considered that even if these figures were to some extent inflated, there is nothing in Mr. Roche's employment background which would indicate the possibility of amassing even a percentage of this amount of money--$331,000.

I have just received this morning from the Probation officer copies of Mr. Roche's income tax returns for 1975 and 1976, and a financial statement of Mr. Roche under the appellation Angel Rosa Gonzalez as of August 31, 1977, showing total assets of $93,800.00, and I think I also received from the Probation officer the justification of sureties which was filed in Puerto Rico on behalf of--well, it was filed by Mr. Roche again under the appellation Angel Rosa Gonzalez on March 17th, in which he and Rosa Maria Artiaga de Gonzalez as sureties stated under oath that their net worth was $200,000.

I believe that this summarizes the various matters which I have taken and shall take into consideration in imposing sentence.

I will hear now from you, Mr. Moss.

MR. MOSS: Your Honor, the government has nothing to add to that which is already before the Court.

THE COURT: Mr. Moss, was my summary of the information, which has been given to me, accurate to the best of your knowledge?

MR. MOSS: Yes, your Honor.

THE COURT: Mr. Mendez, I shall hear from you.

MR. MENDEZ: Having discussed all the matters relating to sentence yesterday in the presentence conference, I have nothing to add except a comment to the effect that the arrest of Mr. Roche for possession of a loaded gun he informs me was not in the River Bend but in Joe's Bar.

Aside from that, the rest of the information is the same as was discussed yesterday, and I have no further allegations to make than the ones made yesterday.

THE COURT: Thank you, Mr. Mendez.

Mr. Roche, do you have anything which you wish to say in your behalf or in mitigation?

THE DEFENDANT: No.

THE COURT: Will you stand, please.

(Defendant Roche stands)

THE COURT: The sentence of the Court is as follows:

It is ajudged that on counts 1, 4 and 8 Mr.

Roche is committed to the custody of the Attorney General or his authorized representative for a period of 15 years; such sentences to run concurrently with each other.

There is also imposed a special parole term of 15 years in addition to the term of imprisonment.

Mr. Moss?

MR. MOSS: The government requests that your Honor inform the defendant of his right to appeal.

THE COURT: Mr. Roche, you have a right to appeal. The appeal can be filed by your attorney, or, if you wish, the clerk of the court will file an appeal for you.

Mr. Mendez, will you file a notice of appeal?

MR. MENDEZ: I have it ready with me, your Honor, and I will file it.

THE COURT: Do you have any application with respect to remand?

MR. MOSS: Yes, your Honor, the government requests that the defendant be remanded at this time for sentence.

THE COURT: Mr. Mendez, the government has requested that Mr. Roche be remanded.

Do you have anything to say?

MR. MENDEZ: Well, your Honor, this is a case in which Mr. Roche has been free on bond pending sentence. He has appeared all the times he was assumed to--as a matter of fact, he knew since yesterday the sentence more or less--the minimum sentence that he would receive, since he was aware of the sentences the co-defendants had received, and he had been complying with all the court orders.

He is free on $100,000 bail. At this time I would ask the Court to let him remain under the same conditions pending the appeal.

THE COURT: Mr. Moss?

MR. MOSS: Your Honor, the government requests remand for several reasons, the first of which is as a protection to the community.

The basis for that request is grounded in the matters that were brought to your Honor's attention at the presentence conference yesterday.

It is the government's position that Mr. Roche at this time is still in control of a sizeable narcotics operation on the Lower East Side of New York, and that continues while Mr. Roche remains free on bail.

A remand at this time the government feels would be in the best interests of society, for the protection of society and the community which is being victimized by that narcotics operation.

Second of all, the government submits that there are no substantial issues on appeal that would warrant the defendant being permitted bail on appeal, and in this regard the government submits that your Honor was very cautious and careful on rulings during the trial. The only issues which have been argued with any force since the convictions were returned by the jury in this case pertain to counsel's comments made during the course of summation. No other issue, with the exception of perhaps one or two that relate only the the defendant Orlando Machado, has been argued by any attorney in this case.

Certainly if there were any substantial merit to any other issue I submit that one of the attorneys in this case would have brought that to your Honor's attention in a post-conviction motion.

With respect to the one issue that has been brought to your Honor's attention--and that is the remarks of the government in summation--I submit the law of the Second Circuit is very clear as stated in United States v Tramunti, that those remarks being prompted as they were in large part by the comments of this defendant's attorney in summation were not improper and would not form a substantial basis for an appeal in this case.

MR. MENDEZ: May I reply, your Honor?

THE COURT: Yes, Mr. Mendez.

MR. MENDEZ: As to the first point raised by Mr. Moss, it is claimed that Mr. Roche maintains a narcotics ring operation while he is out on bail. The Court is aware of the fact that Mr. Roche has a condition for his being on bail, living in Santa Isabel, Puerto Rico, and that he must report to Police Headquarters every day, and that he must not abandon the jurisdiction, and I find it very hard for anyone to run a narcotics operation from there to New York; and I wonder if he were committed, if he were not in a better position to do what Mr. Moss claims he was doing than being in Puerto Rico in a small town, with such very few facilities and having to report every day and having all of his movements being restricted.

As to the issue whether there are legal issues that justify the concession of a bond on appeal, aside from the ones mentioned by Mr. Moss I think there is another one. I think this is a case in which multiple conspiracies were put together and were tried together, and in its day the Court of Appeqls could revoke this conviction, because this was a case in which all the evidence against the Valenzuela organization, the Gallardo people, the people in California--people who were never related to my client--Herman Rosa, Raymond Valentine and the rest of them--there was abundant evidence which was considered according to the present state of the law--were considered against my client that in fact had no relation whatsoever to my client. That is a point which we intend to raise on appeal and which I think is a substantial one.

Aside from that, your Honor, I do not think that this man represents any danger to the community since he has been complying with all the court orders.

I do not think there is any risk of evading jurisdiction, and if at the end the conviction prevails he will be available in court to be remanded and comply with the sentence.

THE COURT: The Court of Appeals has spoken recently with respect to the matter that you raised--the question of multiple conspiracies in the Moten case, and it has said in the Moten case that there may come a time when a case involving multiple defendants is presented to it which would present a problem, but it did not find that Moten, which was a much larger prosecution than the one we had was such a case, and in my judgment it will not find that the trial that was had in this matter was such a case.

I am persuaded, considering among other things the relatively recent occasion on which Mr. Roche was arrested with a gun in his possession, and in light of the information which has been brought to my attention by the United States attorney and the Probation officer that it is in the best interests of the public that Mr. Roche be remanded--and he will be remanded.

Is there anything further, gentlemen?

MR. MOSS: No, your Honor.

MR. MENDEZ: Your Honor, may I be allowed to speak with him before he is taken away?

THE COURT: Yes, you may.

MR. MENDEZ: Thank you very much.

- - -

CLINICAL ABSTRACT

THIS IS A PRIVILEGED AND CONFIDENTIAL COMMUNICATION

BETH ISRAEL MEDICAL CENTER

BERNSTEIN INSTITUTE

NEW YORK, N. Y.

✓ 31-97-75

[illegible]

[illegible]

[illegible]IGUEZ, ANTHONY

[illegible] 07/11/50

[illegible]

ADM 8-25-75 [illegible]

D-1

PATIENT'S NAME PLATE

DATE DISCHARGED	DIAGNOSIS
8/27/75	AMA III

SUMMARY

314.01

314.4

ABG 68450
BIMC 24-13J

675A

CLINICAL ABSTRACT

(12)

BETH ISRAEL MEDICAL CENTER
10 Nathan D. Perlman Place New York, N.Y. 10003

BERNSTEIN INSTITUTE

N.J.P.I.
IC-824113
RODRIGUEZ, ANTHONY
YP-31-97-73 M 07/14/52
PAULA
ADM-3-25-75 SA

PATIENT DATA SHEET

ADMISSION TYPE
ADOLESCENT
☐ YES ☐ NO

PATIENT'S NAME (LAST NAME, (COMMA) FIRST NAME (BLANK SPACE) MIDDLE INITIAL)

UNIT NUMBER

SEX	AGE	DOCTOR	DOCTOR'S CODE	ADMISSION DATE	ADMISSION FLOOR	SOUNDEX CODE	DATE OF BIRTH	NUMBER OF THIS ADMISSION
M ☐ F ☐				MO. DAY YR.	A		MO. DAY YR.	

STREET ADDRESS
NUMBER N E W S STREET STREET AVE.
BOROUGH (CIRCLE) MANHATTAN BROOKLYN BRONX QUEENS STATEN ISLAND OTHER (SPECIFY)
ZIP CODE

HEALTH AREA
HEALTH DISTRICT
MARITAL STATUS (CIRCLE): NEVER MARRIED DIVORCED MARRIED (LEGALLY) WIDOWED COMMON LAW SEPARATED
HOUSEHOLD COMPOSITION (MARK ALL WHICH APPLY): ☐ LIVES ALONE ☐ WITH CHILDREN ☐ WITH OTHERS ☐ WITH SPOUSE ☐ WITH SIBLINGS ☐ IN INSTITUTION ☐ WITH PARENTS ☐ OTHER RELATIVES ☐ UNKNOWN
PATIENT'S TELEPHONE NO.
VETERAN YES ☐ NO ☐

NEXT OF KIN
NAME RELATIONSHIP ADDRESS PHONE NUMBER

BIRTHPLACE
NEW YORK CITY ☐ OTHER (SPECIFY STATE OR COUNTRY)
CODE
WHAT LANGUAGE OTHER THAN ENGLISH WAS SPOKEN IN YOUR HOME WHEN YOU WERE A CHILD?
SPANISH ☐ OTHER ☐ SPECIFY ENGLISH ONLY ☐

RELIGION
PROTESTANT ☐ ROMAN CATH. ☐ JEWISH ☐
NONE ☐ OTHER ☐ (SPECIFY)
MOTHER'S FIRST NAME
COLOR
☐ BLACK ☐ ORIENTAL ☐ OTHER (SPECIFY)
☐ WHITE ☐ AM. INDIAN

HIGHEST EDUCATIONAL GRADE COMPLETED
0☐ 1☐ 2☐ 3☐ 4☐ 5☐ 6☐ 7☐ 8☐ 9☐ 10☐ 11☐ 12☐
VOCA., BUS., OR TECH. ☐ COLLEGE 1☐ 2☐ 3☐ 4☐ GRAD. SCH. ☐ UNKNOWN ☐
OCCUPATION
CODE
SOURCE OF REFERRAL
☐ SELF, FAMILY, FRIEND
☐ OTHER (SPECIFY)

PAROLE NOW YES ☐ NO ☐
PROBATION NOW YES ☐ NO ☐
CASE PENDING YES ☐ NO ☐
AGE HEROIN ADDICTION BEGAN
ARE YOU NOW USING HEROIN? YES ☐ NO ☐
COST PER BAG $
NO. BAGS PER DAY
COST PER DAY $

OTHER DRUGS OR ALCOHOL NOW USED (SPECIFY AMOUNTS AND FREQUENCY)
☐ ALCOHOL
☐ AMPHETAMINE, METHEDRINE OR "SPEED"
☐ BARBITURATES
☐ "CIBAS" OR DORIDEN
☐ COCAINE
☐ MARIJAUNA OR POT
☐ TRANQUILIZERS
☐ "UPS & DOWNS"
☐ RED JACKETS, YELLOW JACKETS, RED & BLUE JACKETS.
☐ OTHER
☐ NONE
☐ METHADONE
☐ LEG. ☐ ILLEG.

WHERE ELSE HAVE YOU BEEN TREATED FOR ADDICTION?
WHEN?
☐ STATE MENTAL HOSPITAL ☐ PHOENIX ☐ BERNSTEIN ☐ NOWHERE
☐ METHADONE PROGRAM ☐ NACC ☐ OTHER (SPECIFY)

HAVE YOU EVER HAD: (CHECK)	YES	NO	SPECIFY
ASTHMA			
DIABETES			
EPILEPSY			
HEPATITIS			
NERVOUS TROUBLE			
TUBERCULOSIS			
VENEREAL DISEASE			
ALLERGIES			
PSYCHIATRIC TREATMENT			

	YES	NO	SPECIFY
HAVE YOU HAD ANY RECENT OPERATIONS?			
HAVE YOU HAD ANY RECENT SERIOUS INJURY?			
ARE YOU PREGNANT?			MONTHS
DO YOU HAVE ANY PRESENT COMPLAINTS?			

YEAR FIRST ADMITTED	DATE LAST ADMITTED	PRIORITY LAST DISCHARGE	DATE OF INTERVIEW	INTERVIEWER	CODE	SOCIAL SECURITY NUMBER
	MO. DAY YR.		MO. DAY YR.			

IF NOT ADMITTED, WHY?
WEEKDAY ADMITTED: MONDAY THURSDAY TUESDAY FRIDAY WEDNESDAY SATURDAY SUNDAY
MONTHS SINCE LAST ADMISSION
DAYS ON WAITING LIST
CURRENT REGISTER NUMBER

PATIENT'S CHART
676A
BIMC 60-50 4-73 UTILIZATION AND REVIEW ACTIVITIES
ABG#65233

[illegible]

BETH ISRAEL MEDICAL CENTER
10 NATHAN D. PERLMAN PLACE NEW YORK, N.Y. 10003

NEW YORK, N.Y. 10003
DRUG ADDICTION SERVICE
CERTIFICATE OF NEED FOR ADMISSION

M.J.F.I.
[illegible] 4 8
RODRIGUEZ, ANTHONY
[illegible] -75 M 07/14/52
PAULA
ADM-3-25-75 5

1. REFERRED BY (fill in name of program or clinic)

[✓ Self]	MMTP on methadone? ☐ yes ☐ no secondary dependency? ☑ yes ☐ no	Drug Free Program	Other

2. HISTORY OF CURRENT ADDICTION OBTAINED FROM:

☐ referring agency ☑ patient ☐ family/friends ☐ no current dependency

3. DATE OF MOST RECENT DAS DISCHARGE (if any): ____________ Type: ____________

4. PHYSICAL EVIDENCE:

☑ Fresh puncture wounds
☐ Acute absceses

Drug or Alcohol intoxication present
☑ Nodding
☐ Lack of coordination
☑ Pupils constricted
☐ Other:

Abstinence Syndrome present
☐ Tearing
☐ Rhinorrhea
☑ Gastro-intestinal disturbance
☐ Other:

5. SIGNS OR SYMPTOMS OF CONCURRENT ILLNESS (describe if present)

6. INITIAL DIAGNOSTIC IMPRESSION
✓ Drug Dependency, singly type (list type): Heroin, Cocaine
__ Drug Dependency, multiple type (list types):
__ Drug Dependency, complicated by secondary diagnosis
Type of dependency:
Secondary diagnosis:

7. INDICATIONS FOR ADMISSION
A ✓ Detoxification requested by patient
__ Detoxification requested by referring agency

B __ Treatment which cannot be initiated or continued unless on an inpatient service
__ Condition other than addiction; treatment can best be provided on DAS
__ No one else will accept patient
__ Other

Explain

I certify that admission for inpatient hospital care is necessary

______________ M.D. DATE: 3/25/75

Reviewed by: ______________ PRIMARY
DATE: ______________
Action: more information required
meets criteria
physician review indicated

______________ PHYSICIAN
____
Action: conference required
approved
disapproved

Conference Results:

677A

BETH ISRAEL MEDICAL CENTER

10 NATHAN D. PERLMAN PLACE NEW YORK, N.Y. 10003

CONSENT & AUTHORIZATION UPON ADMISSION TO HOSPITAL & FOR MEDICAL TREATMENT

[illegible]
[illegible]
RODRIGUEZ, ANTHONY
[illegible] 01-07-7[illegible]
PAUL
[illegible]5-75 [illegible]

1. I, THE UNDERSIGNED, HEREBY AUTHORIZE AND REQUEST Dr Trigg M.D. AND/OR SUCH ASSOCIATES OR ASSISTANTS AS MAY BE SELECTED BY HIM, OR BETH ISRAEL MEDICAL CENTER TO PROVIDE SUCH MEDICAL CARE AND TO ADMINISTER SUCH ROUTINE DIAGNOSTIC, RADIOLOGICAL AND/OR THERAPEUTIC PROCEDURES AND TREATMENTS, INCLUDING BUT NOT LIMITED TO THE ADMINISTRATION OF PHARMACEUTICAL PRODUCTS, INFUSION OR TRANSFUSION OF BLOOD OR BLOOD COMPONENTS, INJECTIONS, AND INTRAVENOUS MEDICATION OR OTHER THERAPEUTIC SOLUTIONS AS IN THE JUDGMENT OF THE ABOVE PHYSICIAN(S) THEY DEEM NECESSARY OR ADVISABLE IN THE DIAGNOSIS, CARE AND TREATMENT OF: Rodriguez Anthony
(MYSELF OR NAME OF PATIENT)
(OR IN THE CASE OF OBSTETRICAL PATIENTS) DIAGNOSIS, CARE OR TREATMENT OF MY NEWBORN.

2. REALIZING THAT MEDICAL CARE BY MODERN METHODS REQUIRES THE COOPERATION OF NUMEROUS TECHNICIANS, ASSISTANTS, NURSES AND OTHER PERSONNEL, I GIVE FURTHER CONSENT TO MINISTRATIONS AND MEDICAL AND/OR ROUTINE DIAGNOSTIC, RADIOLOGIC AND/OR THERAPEUTIC PROCEDURES AND TREATMENT BY ALL SUCH QUALIFIED PERSONNEL WORKING UNDER THE SUPERVISION OF BETH ISRAEL MEDICAL CENTER.

3. I CERTIFY THAT I HAVE READ THE ABOVE OR THAT IT HAS BEEN READ TO ME AND I FULLY UNDERSTAND THE CONSENT GIVEN HEREIN. I AM AWARE THAT THE PRACTICE OF MEDICINE AND SURGERY IS NOT AN EXACT SCIENCE AND I FURTHER CERTIFY THAT NO GUARANTEE OR ASSURANCE HAS BEEN MADE OR IMPLIED AS TO THE BENEFICIAL RESULTS THAT MAY BE OBTAINED AS A RESULT OF THE ABOVE MENTIONED DIAGNOSTIC AND THERAPEUTIC PROCEDURES. HAVING BEEN AWARE OF THE ABOVE, I HEREBY RELEASE BETH ISRAEL MEDICAL CENTER, ITS PHYSICIANS, NURSES AND OTHER PERSONNEL FROM ANY AND ALL RESPONSIBILITY OR LIABILITY WHATSOEVER.

DATE: 6/25/75 TIME: ______ a.m. p.m. PATIENT: Anthony Rodriguez
(SIGNATURE)

WITNESS: ______________________
(SIGNATURE)

WHEN CONSENT IS GIVEN BY OTHER THAN THE PATIENT (i.e., IF UNCONSCIOUS, INCAPABLE OF SIGNING OR INCOMPETENT TO GIVE CONSENT) STATE REASON AND HAVE PERSON GIVING CONSENT SIGN BELOW:

WITNESS: ______________________ ______________________
(SIGNATURE) (SIGNATURE)

RELATIONSHIP TO PATIENT: ______________________

IF A PATIENT IS A MINOR AND APPLIES FOR ADMISSION OR TREATMENT WITHOUT PARENTAL CONSENT, A "CERTIFICATE FOR EXAMINATION AND TREATMENT OF A MINOR—WITHOUT PARENTAL CONSENT" B. I. M. C. FORM #24-46 (REV. 1/73) MUST BE COMPLETED AND SIGNED IN ADDITION TO THIS FORM.

678A

BIMC 24-51 Rev.(8/73)
ABG 65406

5

BETH ISRAEL MEDICAL CENTER

NEW YORK, N.Y. 10003

[illegible]
[illegible]4[illegible]9
RODRIGUEZ, ANTHONY
MR-[illegible]-07-73 M 07/[illegible]/5[illegible]
PAUL[illegible]
[illegible]-25-75 5[illegible]

RELEASE BY/OR ON BEHALF OF PATIENT LEAVING BETH ISRAEL MEDICAL CENTER AGAINST MEDICAL ADVICE

THIS IS TO CERTIFY. THAT I, THE UNDERSIGNED, PRESENTLY A PATIENT AT BETH ISRAEL MEDICAL CENTER, AM LEAVING THE MEDICAL CENTER AGAINST THE ADVICE OF THE PHYSICIAN(S) ATTENDING ME AND OF THE MEDICAL CENTER ADMINISTRATION.

I ACKNOWLEDGE THAT I HAVE BEEN FULLY INFORMED OF THE RISKS AND DANGERS INVOLVED IN MY LEAVING THE MEDICAL CENTER AT THIS TIME BY Dr. NICHOLS M.D. AND I ASSUME THE RESPONSIBILITY FOR ALL SUCH RISKS AND DANGERS.

I RELEASE BETH ISRAEL MEDICAL CENTER, MY ATTENDING PHYSICIAN(S) AND ALL OF ITS MEDICAL CENTER'S STAFF, TOGETHER WITH THE OFFICERS, AGENTS, AND EMPLOYEES OF THE SAID MEDICAL CENTER FROM ALL RESPONSIBILITY OR LIABILITY FOR ANY INJURIES, DAMAGES OR ADVERSE RESULTS, INCLUDING ANY DETERIORATION IN MY PHYSICAL CONDITION, WHICH I MAY SUFFER BECAUSE OF MY LEAVING THE MEDICAL CENTER PREMATURELY AND AGAINST MEDICAL ADVICE.

DATE: 8/27/75 TIME 9 [✓ a.m.] p.m. PATIENT: Anthony Rodriguez (SIGNATURE)

WITNESS: L Casullo (SIGNATURE)

TO BE COMPLETED IF PATIENT IS UNABLE TO GIVE CONSENT:

______________________________ (REASON)

I CERTIFY THAT I HAVE READ AND UNDERSTAND THE FOREGOING RELEASE AND I AGREE TO HOLD HARMLESS BETH ISRAEL MEDICAL CENTER, MY ATTENDING PHYSICIAN(S) AND ALL OF THE MEDICAL CENTER'S ATTENDING STAFF, ITS OFFICERS, AGENT AND EMPLOYEES FROM ALL RESPONSIBILITY OR LIABILITY WITH REFERENCE TO DISCHARGE OF THE PATIENT NAMED ABOVE.

DATE:__________ TIME______ a.m. p.m. __________ (SIGNATURE)

WITNESS:__________ (SIGNATURE) RELATIONSHIP TO PATIENT:__________ (SIGNATURE)

TO BE COMPLETED IF SIGNATURE IS REFUSED:

SIGNATURE REFUSED: REMARKS__________

WITNESS:__________ (SIGNATURE) WITNESS:__________ (SIGNATURE)

BIMC 2-8 (REV. 8/73)
ABG 60491

6

BETH ISRAEL MEDICAL CENTER

10 NATHAN D. PERLMAN PLACE NEW YORK, N.Y. 10003

[illegible]
[illegible]
RODRIGUEZ, ANTHONY
[illegible]-3[illegible]-07-73 [illegible]
PAULA
[illegible] 8-25-75 [illegible]

AUTHORIZATION FOR THE RELEASE OF INFORMATION
TO BETH ISRAEL MEDICAL CENTER

I HEREBY AUTHORIZE

____
(NAME OF INSTITUTION)

TO RELEASE ALL INFORMATION FROM THE MEDICAL RECORD OF

Rodriguez Anthony
(NAME OF PATIENT)

TO:

☐ BETH ISRAEL HOSPITAL, 10 NATHAN D. PERLMAN PLACE, NEW YORK CITY, 10003

☐ MORRIS J. BERNSTEIN INSTITUTE, 307 SECOND AVENUE, NEW YORK CITY, 10003

☐ GOUVERNEUR HEALTH SERVICES PROGRAM, 9 GOUVERNEUR SLIP, NEW YORK CITY, 10002

☐ JUDSON HEALTH CENTER, 34 SPRING STREET, NEW YORK CITY, 10012

OF THE BETH ISRAEL MEDICAL CENTER.

DATE: 8/25/75 TIME: ________ a.m. p.m.

PATIENT: Anthony Rodriguez
(SIGNATURE)

WITNESS: ____________________
(SIGNATURE)

WHEN CONSENT IS GIVEN BY OTHER THAN THE PATIENT (i.e., IF UNCONSCIOUS, INCAPABLE OF SIGNING OR IMCOMPETENT TO GIVE CONSENT) STATE REASON AND HAVE PERSON GIVING CONSENT SIGN BELOW:

WITNESS: ____________________
(SIGNATURE)

____
(SIGNATURE)

RELATIONSHIP TO PATIENT: ____________________

IF A PATIENT IS A MINOR AND PARENTAL CONSENT IS NOT OBTAINABLE, A "CERTIFICATE FOR EXAMINATION OR TREATMENT OF A MINOR" MUST BE COMPLETED IN ADDITION TO THIS FORM.

680 A

BIMC 24-48

7

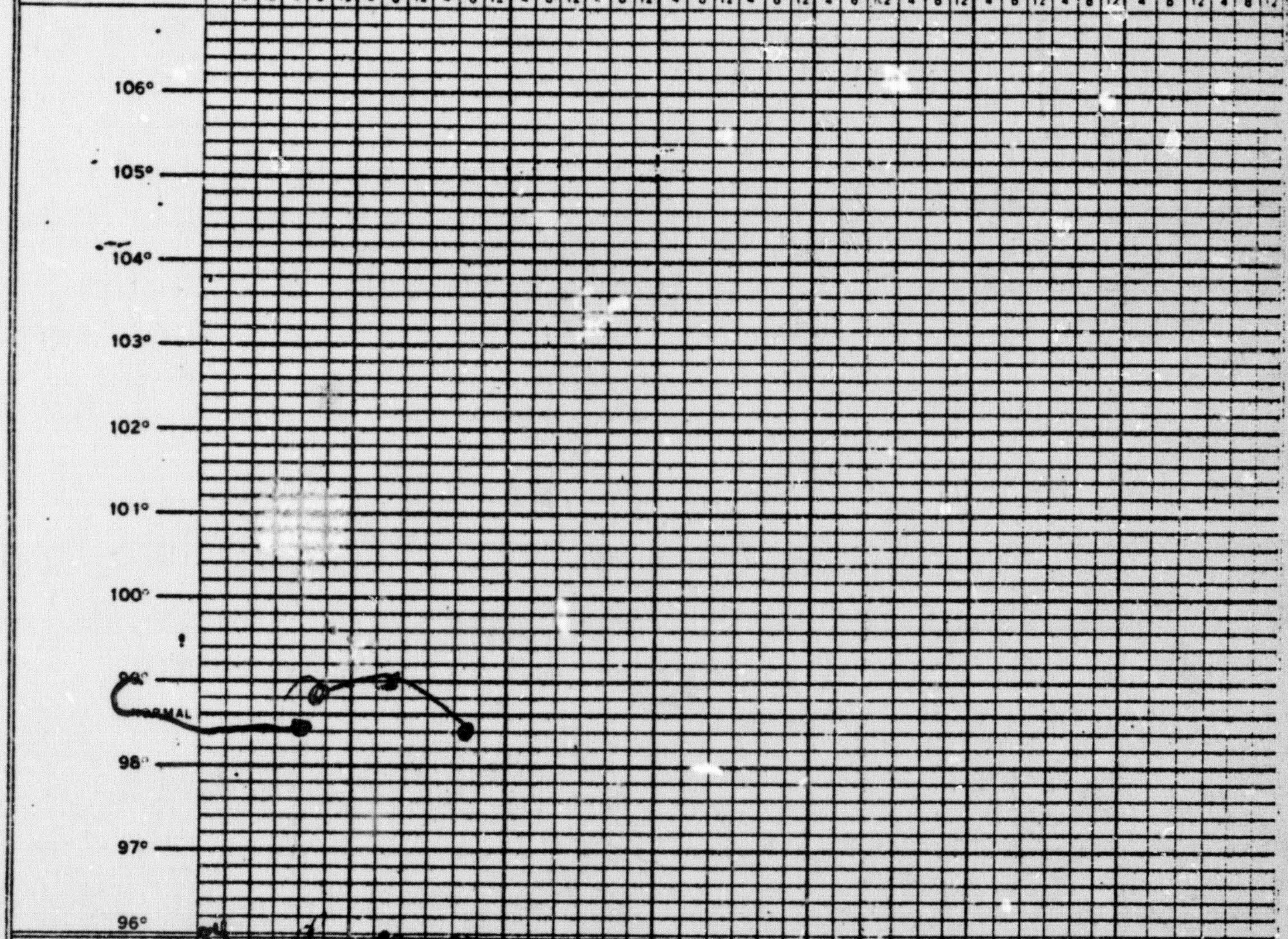
BETH ISRAEL MEDICAL CENTER
NEW YORK, N.Y. 10003

TEMPERATURE CHART
AND
FLUID SUMMARY RECORD

K.J.P.I.
[illegible]4110
[illegible] SCOTZ, [illegible]
[illegible]-37-7[illegible]

IMPRINT WITH PATIENT'S IDENTIFICATION PLATE OR PRINT PATIENT'S NAME, RECORD NUMBER, AGE AND SEX
IF O.P., PRINT PATIENT'S ADDRESS AND TELEPHONE NUMBER

DATE							
DAY IN HOSPITAL	8-25	26	27	28	29		
DAY POST OP. OR POST PARTUM							
HOUR	4 8 12 4 8 12	4 8 12 4 8 12	4 8 12 4 8 12	4 8 12 4 8 12	4 8 12 4 8 12	4 8 12 4 8 12	4 8 12 4 8 12



PULSE	84 56	88 70					
BLOOD PRESSURE	118/74	114/60					
STOOLS							
WEIGHT							
TIME INTERVAL	12-8 8-4 4-12	12-8 8-4 4-12	12-8 8-4 4-12	12-8 8-4 4-12	12-8 8-4 4-12	12-8 8-4 4-12	12-8 8-4 4-12
INTAKE ORAL							
INTAKE PARENTERAL SOLUTIONS							
INTAKE BLOOD PRODUCTS							
INTAKE 8 HR. TOTAL							
24 HOUR TOTAL	CC	CC	CC	CC	CC	CC	CC
OUTPUT URINE							
OUTPUT G.I. SUCTION							
OUTPUT EMESIS							
OUTPUT OTHER							
OUTPUT 8 HR. TOTAL							
24 HOUR TOTAL	CC	CC	CC	CC	CC	CC	CC

BIMC 25-1
ABG 65459

681A **TEMPERATURE RECORD**

BETH ISRAEL MEDICAL CENTER
NEW YORK, N.Y. 10003

8

M.J.B.I.
[illegible] 4118
[illegible]GUEZ, [illegible]NTHONY
[illegible]-27-75 [illegible]
PAULA
ADM-8-25-75 5[illegible]

NURSES' NOTES

DATE	A.M.	P.M.	NURSES' NOTES ON MEDICATION – TREATMENT – SYMPTOMS – CONDITION
8-25-75		3^{00}	Admitted a 23 years old for [illegible] detox.
			Appears slightly drowsy
			BP 118/74 P-84 R-20
			= No known allergy
			= No psychiatric history
			= No history of seizures
			- watched closely
			- chest X ray done
			Soyono
8.26.75	6^{05} am		Sleeping on all rounds, no complaints made.
			D McFarlane
	4		[illegible] quite drowsy BP 110/60
8.27.75	5^{30} a		Slept most of the night, in no apparent distress.
			D McFarlane
8/27	9		AMA III / Marshall

3-78
BETH ISRAEL MEDICAL CENTER – MORRIS J. BERNSTEIN INSTITUTE

DISCHARGE / TRANSFER NOTICE

te of tion 8/27/75 (15 20) [✓ a.m.] Time 9 p.m. Floor 5-A (28 29)

M.J.B.I.
[illegible] 4118
[illegible]GUEZ, [illegible]NTHONY
[illegible]-27-75 [illegible]

MJBI DISCHARGE (16)	MJBI TRANSFER (17)
TYPE (32)	To MJBI Floor ______ (35 36)
MEDICAL	
AMA III	
OTHER (Specify)	
ransfered to BIH	Reason for transfer
o Floor ______	
rasferred to other hospital	
______ Name	

Census No. [illegible]
Date Admitted 8/25/75
Date of Last Dose of Methadone 8/27/75 month day
☐ Methadone NEVER prescribed
Approved by K. Casutto

CHART COPY

nt rred to ______

No ☐ Appointment Made Yes ☐ For ______ (date)

682A

BMC 27-64 (REV. 4/72) ABG 65412

NEW YORK, N.Y. 10003 9

PATIENT'S PROGRESS NOTES

N.J.B.I.
AD-824118
RODRIGUEZ, ANTHONY
MR-31-97-78 M 07/14/52
PAULA
USE PATIENT'S PLATE

IN LEFT COLUMN ENTER DATE, TIME AND TITLE:
(M.D., R.N., L.P.N., S.W., CNS., O.T., V.R., R.T.)

TITLE	DATE/TIME	SIGN EACH ENTRY WITH YOUR FIRST INITIAL, LAST NAME, TITLE
CNS	8/27/75	PT, PR/M 23 y.o on 1st
		BIMC admission for heroin detox
		signed out today, no notice.
		As PT has not been here 72 hours
		his discharge priority is AMA III.
		R. Casutto

BIMC 25-1
ABG 65459

683A PATIENT'S PROGRESS NOTES

BETH ISRAEL MEDICAL CENTER
BERNSTEIN INSTITUTE
NEW YORK, N. Y.

10

PATIENT'S MEDICAL AND SOCIAL PROFILE

Must be completed by physician within 24 hours after admission.
Check each item. Date and Sign.

B.J.P.I.
IP-6/4118
RODRIGUEZ, ANTHONY
[illegible]-97-73 [illegible] 07/14/52
PAULA
ADM-3-25-75 [illegible]

USE PATIENT'S NAME PLATE

I MEDICAL HISTORY GUIDE

RODRIGUEZ, ANTHONY 23

DRUG ADDICTION AND ADMISSION NOTE

AGE OF ONSET 7 yrs ago	CONTINUOUS ☑ Yes ☐ No past 8 mo	HEROIN ☑ Yes ☐ No	AMOUNT IN 24 HOURS _____ Bags ($ 800)	LAST FIX - HOW MANY HOURS AGO? [illegible]
BARBITURATES ☐ Yes ☑ No	KIND HOW LONG?	AMOUNT	LAST DOSE	

DORIDEN ☐ Yes ☑ No	AMOUNT HOW LONG?	LAST DOSE	TRANQUILIZER ☐ Yes ☑ No	KIND & AMOUNT	LAST DOSE
OTHERS ☑ Yes ☐ No	KIND Cocaine	AMOUNT $100/day	LAST USAGE [illegible]		

ALCOHOL ☑ Yes ☐ No	KIND Scotch	AMOUNT moderately.	CIGARETTES ☑ Yes ☐ No	NO. PACKS DAILY less than 1 pk.	MARIHUANA ☑ Yes ☐ No	AMOUNT occasional HOW LONG?

CONVULSIONS ☐ Yes ☑ No	AGE OF ONSET	BEFORE DRUG	AFTER DRUG	RELATED TO DRUG INTAKE ☐ Yes ☐ No	TO WITHDRAWAL ☐ Yes ☐ No	FREQUENCY	LAST ATTACK	

II PAST MEDICAL HISTORY

EYES n	EARS (Hearing) n	GLANDS (Thyroid) n

TUBERCULOSIS ☐ Yes ☑ No	DATE	WHERE TREATED	CHEST X-RAY ☐ Yes LAST DATE ☐ No	IS BEING FOLLOWED ☐ Yes ☐ No	WHERE

OTHER LUNG DISEASES:	ASTHMA ☐ Yes ☑ No	BRONCHITIS ☐ Yes ☐ No	OTHER (DURATION & DATE OF LAST ATTACK)

HEART DISEASE: RHEUMATIC ☐ Yes ☑ No	WHEN & WHERE TREATED DURATION OF STAY IN BED	RECURRENCE ☐ Yes ☐ No	PRESENT SYMPTOMS

CORONARY ☐ Yes ☑ No	WHEN WHERE TREATED	HYPERTENSION n	WHEN DISCOVERED	PRESENT SYMPTOMS

KIDNEY DISEASE: ☐ Yes ☑ No	WHEN - GIVE ALL DETAILS (URINE, BLOOD, ETC.)	TETANUS TOXOID, WHERE AND WHEN LAST GIVEN ☑ Yes ☐ No ? ?

GASTROINTESTINAL DISEASE:

ULCER ☐ Yes ☑ No	WHEN - SYMPTOMS - X-RAY?	WHERE	BLEEDING ☐ Yes ☐ No
G.I. OPERATION ☐ Yes ☑ No	OTHER G. I. COMPLAINTS		

This is only a guide to history taking. Any additional information and elaboration of the above answers must be continued on a Progress Sheet.

684A

BIMC 60-64

NO. OF ARRESTS	NO. OF CONVICTIONS	ANY CONVICTED FELONIES	IF YES, EXPLAIN
		☐ Yes, ☐ No	

NO. PRISON CONFINEMENTS IN LAST 2 YEARS	LAST INCARCERATION DATE	LOCATION	CHARGES

COURT CASE PENDING: COURT	PART	DATE DUE	COURT ADDRESS

OTHER AGENCIES TO WHOM PATIENT AND/OR FAMILY IS KNOWN

IV EDUCATION

LAST GRADE COMPLETED	REASON FOR LEAVING	H. S. EQUIVALENCY: WHERE
		☐ Yes, ☐ No

TYPE OF SCHOOLING

☐ Academic, ☐ Vocational, ☐ Other (explain)

V EMPLOYMENT:

	EMPLOYER'S NAME	ADDRESS	DATES WORKED
LAST JOB			

SALARY	TYPE OF WORK	MAIN OCCUPATION	SPECIAL SKILLS

PREVIOUS WORK HISTORY

VI DISCHARGE DATA

TYPE OF DISCHARGE

☐ Medical, ☐ AMA 24 hour Notice ☐ AMA No Notice ☒ Administrative, ☐ Transfer To: ☐ Expired

DATE OF DISCHARGE	TIME OF DISCHARGE	DISCHARGE PRIORITY
8/24/75	9 [✓ AM] PM	AMA III

VII DISCHARGE SUMMARIES

DURING PRESENT HOSPITALIZATION, PATIENT WAS REFERRED TO: ☐ WELFARE, ☐ PSYCHIATRIC CONSULT ☐ SOCIAL SERVICE, ☐ VOC. REHAB. ☐ AFTER CARE, ☒ OTHER [illegible]

DISCHARGE SUMMARY SENT TO:

DIAGNOSES 1. DRUG ADDICTION 314.0 314.4 Heroin Cocaine

2.

3.

4.

REASONS FOR ADMISSION, SYMPTOMS, LAB. CHEST X-RAY, SEROLOGY, COURSE DURING HOSPITALIZATION, CONDITION ON DISCHARGE

1st adm, 23 yr old male, DA to heroin & cocaine admitted for detoxification

PE unremarkable [illegible] tracks present

[illegible] not analyzed

Lab [illegible]

Course: Patient did not complete his detoxification schedule, discharge AMA III 8/27 [illegible]

685A

Page 4 of 4

HEPATITIS ☑ Yes ☐ No

DATES [illegible] Before addiction ☐ Since addiction ☑

NOW? Yes ☐ No ☑

☑ Serum ☐ Infections

JAUNDICED? ☑ Yes ☐ No

DURATION 2 wks.

WHERE TREATED Rikers Island

DIABETES: no

HOW LONG

DIET

MEDICATION

FAMILIAL

SYPHILIS: ☐ Yes ☑ No

WHEN & WHERE TREATED

SKIN DISEASE, INFECTION, ABCESSES

GONORRHEA: ☐ Yes ☑ No

WHEN & WERE TREATED

BLOOD DISEASES:

ANEMIA ☐ Yes ☑ No

SICKLE CELL TRAIT ☐ Yes ☑ No

TRANSFUSIONS? ☐ Yes ☑ No

REACTION

ALLERGIES TO:

PENICILLIN ☐ Yes ☑ No

THORAZINE ☐ Yes ☑ No

OTHERS

PREGNANCIES: NUMBER AND COMPLICATIONS

L.M.P.

SURGERY: Where? When? Why?

—

TRAUMA

—

NEUROLOGICAL: (Special form available if needed) (Brain Damage, Paralysis, etc.)

—

MUSCULO-SKELETAL (Muscle Weakness, Lame, Deformity, Arthritis, Bone Disease)

—

PSYCHIATRIC: (Consultation form if necessary) When? Where? Details:

—

PREVIOUS HOSPITAL AND O.P.D. DRUG ADDICTION TREATMENT

ADDITIONAL INFORMATION NOT LISTED ABOVE

DATE 8/21/75

PHYSICIAN'S SIGNATURE ____________ M.D.

686A

III SOCIAL HISTORY

ADDRESS: STREET	CITY	BOROUGH	STATE	ZIP	DOES PATIENT INTEND TO RETURN TO THIS ADDRESS? ☐ Yes ☐ No	RELIGION ☐ CATH ☐ PROT ☐ HEB ☐ OTHER ☐ NONE
ALIAS	DATE OF BIRTH / /	AGE	PLACE OF BIRTH (STATE OR COUNTRY)	ETHNIC ORIGIN ☐ W. ☐ N. ☐ PR ☐ O	U.S. CITIZEN ☐ Yes, ☐ No	
MARITAL STATUS ☐ S ☐ M ☐ SEP ☐ DIV ☐ C/LW	LENGTH OF MARRIAGE AND/OR SEP.	NAME OF NEXT OF KIN OR PERSON TO BE NOTIFIED	RELATIONSHIP			
ADDRESS OF NEXT OF KIN OR PERSON TO BE NOTIFIED	TELEPHONE NO.					

FAMILY ROSTER

Relationship	NAME	AGE	STREET ADDRESS	TELEPHONE NO.	CITY & STATE
FATHER					
MOTHER (Include Maiden Name)	PT SIGNED OUT				
HUSBAND/ WIFE					
CHILDREN	BEFORE FORM COULD				
	BE COMPLETED				
SIBLINGS					
SIGNIFICANT OTHERS					

MILITARY RECORD DRAFT STATUS ______	DATES OF SERVICE	TYPE OF DISCHARGE
WELFARE STATUS: ACTIVE ______	DATE OF LAST CHECK	WHERE SENT?
D.S.S. CENTER	D.S.S. CASE WORKER	UNIT NO.

COURT HISTORY PAROLE ☐ Yes ☐ No	PROBATION ☐ Yes ☐ No	PAROLE OFFICER	ADDRESS	TEL. NO.	NOTIFY ☐ Yes, ☐ No

Does P.O. know of Patient's Admiss. ☐ Yes, ☐ No

If Not, why?

BERNSTEIN INSTITUTE
NEW YORK, N. Y.

N.J.P.I.
AP-8-A118
RODRIGUEZ, ANTHONY
TR-31-97-73 A 07/14/52
PAULA
ADM-3-25-75 5

PHYSICAL EXAMINATION

WORKING DIAGNOSIS: After Physical Examination

Heroin

Cocaine

GENERAL CONDITION: Temp. ______ Height 5'2"

Wt. ______ pr 126 Pulse: rate 76

Char. g B.P.: s 118/74

Resp.: rate 16 Char. g

Nutrition, etc.: ______

PHYSICAL FINDINGS: Head, Neck, Chest, Cardio-Vascular, Abdomen, Genito-Urinary, Skin, Bones and Joints, Glandular, Neuro-muscular.

Positive or negative findings are to be recorded under each specific classification.

Head – Eyes – pupils rd.
small & react to L&A

Neck – no lymphadenopathy ~
thyroid [illegible]

Chest – Heart – RSR.
Lungs – Clear to P&A.

Abdomen – soft. no
masses palpable.

Extremities – no [illegible] or
varicosities.

MC 27-122 (old #63)

688A

EXAMINED BY ______

15

BETH ISRAEL MEDICAL CENTER
10 NATHAN D. PERLMAN PLACE NEW YORK, N.Y. 10003

N.J.R.I.
[illegible]-8[illegible]4118
RODRIGUEZ, ANTHONY
[illegible]-31-[illegible]-73 [illegible] 07/14/52
PAULA
[illegible]-3-25-75 SA

ALL ENTRIES MUST BE DATED AND SIGNED

8/26/75 MD Admitting Note:
1st adm, 23 yo [illegible] [illegible]
drug addiction & adm. [illegible] on
medical detoxification [illegible]
Complaining [illegible] [illegible]
yesterday
[illegible] [illegible] [illegible]

8/27/75 Dis[illegible] [illegible] [illegible] 14

BIMC

BETH ISRAEL MEDICAL CENTER

NEW YORK, N.Y. 10003

HEMATOLOGY REPORTS 16

☐ 1 BIH ☒ 2 MBI ☐ 3 MMTP ☐ 4 PA ☐ 5 OPD ☐ 6 ER ☐ 7 PHS ☐ 8 OTHER

M.J.P.T.
824113
IGUEZ, ANTHONY
51-67-70 M 07/14/52

167

COLLECTION HOURS ☐ AM ☐ PM DATE 8-26-75
INITIALS
NURSE (107)

REMARK:
CLINICAL DX.
DATE
REPORT BY
-8-25-75 5A
ROOM SA
ADMIT. D.

CIRCLE CODE NUMBER(S) OF TEST(S) REQUIRED: (11) CBC 12 Hgb 13 Hct 14 WBC

TEST.	NORMAL
WBC X 10³	4.8-10.8
RBC X 10⁶	M 4.6-6.2 F 4.2-5.4
Hgb gm	M 14-18 F 12-16
Hct %	M 42-52 F 37-47
MCV	80-94
MCH	27-31
MCHC %	32-36

IF 99.9 RE-DILUTE

15 SICKLE CELL PREP: IMED. %
SCREENING SICKLEDEX: 1 hr. % 3 hr. % 6 hr. % 12 hr. %
DATE: DAY MONTH YR.

16 DIFFERENTIAL

BLAST CELLS	
PROMYELOCYTES	
MYELOCYTES	
METAMYELOCYTES	
STAB.	
POLY.	84
LYMPH.	10
MONO.	2
EOS.	4
BASO	
NRBC / 100 WBC	

17 RED CELL MORPHOLOGY: ANISOCYTOSIS, POIKILOCYTOSIS, POLYCHROMASIA, BASOPHILIC STIPPLING, HYPOCHROMIA

18 PLATELET
19 RETIC
20 LEE WHITE
21 SED. RATE
22 BLD TIME

BETH ISRAEL MEDICAL CENTER
ORIGINAL

ABG #65296 III HEMATOLOGY BIMC 23-13 REV 12/73

HORIZONTAL
Econo-Mount®
U. S. PATENT 3,043,734
CANADIAN PATENT 1964

HOSPITAL INFORMATION SYSTEMS
DIVISION BEEKLEY CORPORATION WEST HARTFORD, CONN
RS-73

BIMC 24-61 REV 4/72

HEMATOLOGY REPORTS

17

BETH ISRAEL MEDICAL CENTER

NEW YORK, N.Y. 10003

URINALYSIS REPORTS

507

☐ BIH ☑ MJBI ☐ MMTP ☐ PA ☐ OPD ☐ ER ☐ PHS ☐ OTHER

COLLECTION ☐ AM ☐ PM HOUR	DATE 4/16/75	TECH INIT Gr	LAB #	CASUAL VOIDED
NOTE		REPT BY	DATE	MID STREAM
				CATH

LAST NAME [illegible] 5A

MEDICAL REC. NO. [illegible] BED NO. [illegible]

ADMIT NO. [illegible]

24

(11) ROUTINE URINALYSIS (Tests 12 to 20)

12	Color	Yellow cl.	17	Glucose	Neg.	21	ALBUMIN QUANTITATIVE
13	Reaction	Acid	18	Acetone	/	22	BENCE-JONES
14	Sp. Gr.	1.011	19	BILE (Bilirubin)		23	UROBILINOGEN
15	Albumin	Neg	20	OCCULT BLOOD		24	GLU. TOL.
16	MICROSCOPIC						

FAST		2 HR	
1 HR		3 HR	
		4 HR	

OTHER TESTS
CONSULT MANUAL OR CALL LAB - WRITE IN

WBC	0-2	CRYSTALS	
CLUMPS	—		
RBC	—	CASTS	
EPITH	0-3		
BACT.	—		

URINALYSIS BIMC 20-5 (REV. 10/73) A86 65207

BETH ISRAEL MEDICAL CENTER

ORIGINAL

HORIZONTAL

Econo-Mount®

U. S. PATENT 3,043,734
CANADIAN PATENT 1964

BIMC 24-65 REV 4/72

HOSPITAL INFORMATION SYSTEMS
DIVISION BEEKLEY CORPORATION WEST HARTFORD CONN.
RS-73

691 A

URINALYSIS REPORTS

18

MISCELLANEOUS REPORTS

BETH ISRAEL MEDICAL CENTER

NEW YORK, N.Y. 10003

SEROLOGY · VDRL · FTA

☐ 1 BIH ☐ 2 MJBI ☐ 3 MMTP ☐ 4 PA ☐ 5 OPD ☐ 6 ER ☐ 7 PHS ☐ 8 ______ OTHER

COLLECTION HOUR ☐ AM ☐ PM DATE	INITIALS	LAB NO. 90	M. J. P.
DIAGNOSIS	REPORTED BY	DATE 8-26-75	

5A

MEDICAL REC. NO.

CIRCLE CODE NUMBER OF TEST REQUESTED

SPECIMEN		REQUEST	
11	BLOOD	[✓ 21]	VDRL [illegible]
12	SPINAL FLUID	22	FTA

5A

ABG-65307

BIMC 20-72 (REV 4/73)

BETH ISRAEL MEDICAL CENTER

ORIGINAL

BIMC 24-64 REV 4/72

HOSPITAL INFORMATION SYSTEMS
DIVISION BEEKLEY CORPORATION WEST HARTFORD CONN
RS-73

HORIZONTAL

Econo-Mount®

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CANADIAN PATENT 1964

692A

19

FC 48-49
ABG 65338

CHART COPY

BETH ISRAEL MEDICAL CENTER, NEW YORK CITY

DEPT. OF RADIOLOGY

NAME	AGE	X-RAY NO.	LOCATION	M.D.	DATE	UNIT NO.
RODRIGUEZ, ANTHONY			8a		8/25/75	319778

CHEST: The heart and lungs appear normal.

D.T. 8/2675

D. Sinesky, M.D.

DS

BIMC 24-82 REV 4/72 ABG 65397

Rodriguez Anthony

20

BERNSTEIN INSTITUTE
METHADONE DETOXIFICATION SCHEDULES

319778

SCHEDULE #1
ONE (1) - $5 BAG/DAILY

1st day of adm - 0 - 5
2nd " " " - 5 - 5
3rd " " " - 5 - 5
4th " " " - 5 - 0
cut

SCHEDULE #2
TWO (2) - $5 BAGS/DAILY
OR $10/DAILY

1st day of adm - 0 - 5
2nd " " " - 10- 5
3rd " " " - 10- 5
4th " " " - 5 - 5
5th " " " - 5 - 0
cut

SCHEDULE #3
THREE (3) - $5 BAGS/DAILY
OR $15/DAILY

1st day of adm - 0 -10
2nd " " " - 10-10
3rd " " " - 10-10
4th " " " - 10- 5
5th " " " - 5 - 5
6th " " " - 5 - 0
cut

SCHEDULE #4
FOUR (4) - $5 BAGS/DAILY
OR $20/DAILY

1st day of adm - 0 -10
2nd " " " - 15-10
3rd " " " - 15-10
4th " " " - 10-10
5th " " " - 10- 5
6th " " " - 5 - 5
7th " " " - 5 - 0
cut

SCHEDULE #5
FIVE (5) to SEVEN (7) - $5 BAGS/DAILY
OR $25 to $35 DAILY

1st day of adm - 0 -15
2nd " " " - 15-15
3rd " " " - 15-15
4th " " " - 15-10
5th " " " - 10-10
6th " " " - 10- 5
7th " " " - 5 - 5
8th " " " - 5 - 0
cut

SCHEDULE #6
EIGHT (8) - $5 BAGS/DAILY

1st day of adm - 0 -15
2nd " " " - 20-15
3rd " " " - 20-15
4th " " " - 15-15
5th " " " - 15-10
6th " " " - 10-10
7th " " " - 10- 5
8th " " " - 5 - 5
9th " " " - 5 - 0
cut

SCHEDULE #7
NINE (9) OR MORE $5 BAGS/DAILY

1st day of adm - 0 -20— 8/25
2nd " " " - 20-20— 8/26
3rd " " " - 20-20— 8/27
4th " " " - 20-15— 8/28
5th " " " - 15-15— 8/29
6th " " " - 15-10— 8/30
7th " " " - 10-10— 8/31
8th " " " - 10- 5— 9/1
9th " " " - 5 - 5— 9/2
10th " " " - 5 - 0— 9/3
cut

NOTE: On day of admission 5 mg. methadone may be prescribed stat if patient has HX of no "fix" within 3 hours of admission and is wide awake and fully alert.

BIMC 60-134

M.J.P.I.
[illegible]-8[illegible]4[illegible]18
RODRIGUEZ, ANTHONY
[illegible]-3[illegible]-[illegible]7-7[illegible] [illegible] 07/14/52
PAULA
ADM-3-25-75 S

METHADONE DOSAGE SHEET

BETH ISRAEL MEDICAL CENTER
BERNSTEIN INSTITUTE
NEW YORK, N. Y.

21

M.J.B.I.
AC-824118
RODRIGUEZ, ANTHONY
MR-31-97-78 M 07/14/52
PAULA
ADM-8-25-75 5A
PATIENT'S NAME PLATE

DAYS ON METHADONE	DATE		7:30 A.M.	2:30 P.M.	9:30 P.M.	OTHER
1	8 25	Sched. Dose			20	
		Given By				
2	26	Sched. Dose	20		20	
		Given By	HM			
3	27	Sched. Dose	20		20	
		Given By				
4	28	Sched. Dose	20		15	
		Given By				
5	29	Sched. Dose	15		15	
		Given By				
6	30	Sched. Dose	15		10	
		Given By				
7	31	Sched. Dose	10		10	
		Given By				
8	8-1	Sched. Dose	10		5	
		Given By				
9	2	Sched. Dose	5		5	
		Given By				
10	3	Sched. Dose	5		0	
		Given By				
11	4	Sched. Dose				
		Given By				
12	5	Sched. Dose				
		Given By				

No patient may be on Methadone for more than 14 days without the express, written authorization of Dr. Trigg.

Nurse will chart "Refused" and initial same where patient refuses scheduled dose.

ABG 65460
BIMC 24-13J

695A

METHADONE DOSAGE SHEET

DOCTOR'S ORDER SHEET

unless otherwise indicated. 22

DRUG ALLERGIES: ie. PENICILLIN ETC.

Rodriguez, Anthony

F. U. P. I.
8
ANTHONY
/52
PAULA
-3-25-75 5

Drug Addiction Service - Admission Orders

1. Regular diet
2. Out of bed ad lib
3. Urine for routine and microscopic
4. Serology
5. C.B.C.
6. Chest X-ray

DOCTOR'S SIGNATURE | DATE | TIME

NURSE | TIME

7. A.P.C. Tab II. (P.O.)
Q 4H P.R.N. (for muscle pain, headache, or toothache)

8. Maalox, 30 cc., (P.O.) Q 4H
P.R.N. (for mild gastrointestinal distress)

DOCTOR'S SIGNATURE | DATE | TIME

NURSE | TIME

9. Milk of Magnesia 30 cc. (P.O.)
Q H.S. P.R.N. (for constipation)

10. Sickle Cell Prep ☐ Yes ☐ No

11- [illegible]
12- [illegible] #7
13- [illegible]
14- Tetanus toxoid 0.5 cc.

DOCTOR'S SIGNATURE | DATE 8/20/75 | TIME

NURSE | TIME

Tetracycline 500 mg stat.
then 250 mg QID x 7 days
Robitussin ʒii QID
x 7 days

DOCTOR'S SIGNATURE | DATE 8/26/75 | TIME

NURSE | TIME

696A

23

MEDICATION ADMINISTRATION RECORD

BETH ISRAEL MEDICAL CENTER
NEW YORK, N.Y. 10003

N.J.B.I.
ID-874118
RODRIGUEZ, ANTHONY
MR-31-97-78 M 07/14/52
PAULA
ADM-8-25-75 5A

IMPRINT WITH PATIENT'S IDENTIFICATION PLATE OR PRINT PATIENT'S NAME, RECORD NUMBER, AGE AND SEX IF O.P., PRINT PATIENT'S ADDRESS AND TELEPHONE NUMBER

ALLERGIC TO:

DATE ORDERED	MEDICATION DOSAGE AND FREQUENCY	ROUTE OF ADM.	DATE 8 25		DATE 26		DATE 27		DATE 28		DATE 29	
			TIME	INITIALS	TIME	INITIALS	TIME	INITIALS	TIME	INITIALS	TIME	INITIALS
8 25	Phenergan 25 mg HS		12	A	10	B	10		10		10	
8 25	Testosterone ip 0.5cc	IM	6	A								
	Tetracycline 250mg				2	[illegible]						
	STAT 1											
	Robitussin ʒ ii				10		10		10		10	
	Q.I.D.				2		2		2		2	
					6	K	6		6		6	
					10	G	10		10		10	
	Tetracycline 250mg				10	—	10		10		10	
	Q.I.D.				2	—	2		2		2	
					6	K	6		6		6	
					10	K	10		10		10	
8 25	Testosterone [illegible] c 5cc	I.M	6									

NURSE'S SIGNATURES	NURSE'S SIGNATURES	NURSE'S SIGNATURES
Bryce		

ABG 65460
BIMC 24-13J

DISCHARGE DATE

SEP 9 1977
S.D. OF N.Y.

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - -

UNITED STATES OF AMERICA :
:
VS : Indictment Number 77-Cr-100
:
LUIS RAMOS NUNEZ :

- - - - - - - - - - - - - -

A F F I D A V I T

I Jose Luis Iglesias, after being duly sworn under oath, deposes and says as follows:

1. That on or about the year of 1974 I was indicted for violations of drug laws in the above cited indictment.

2. That I entered during trial a plea of guilty on advice of counsel.

3. That on August 2, 1977 I was sentenced to a term of five (5) years for said violations.

4. That the indictment contained numerous defendants one being Luis Ramos Nunez.

5. That I had never met Luis Ramos Nunez nor had I ever at any time entered into any sort of conspiracy involving narcotics or any other criminal activity with said Luis Ramos Nunez.

awaiting sentencing upon my plea of guilty, and that I was not sentenced untill trial was completed.

7. That I was guilty of the violations of drug laws with certain named defendants but at no time was I aware of the existance of Luis Ramos Nunes, nor was Luis Ramos Nunez ever present at any stage of said conspiracy.

8. That defendant Raymond Rivera never at any time had any conversation with myself concerning one Luis Ramos Nunez.

9. That I now come forward of my own free will and under no duress due to the fact that one Luis Ramos Nunez was found guilty as charged in the indictment and that I know from personal involvement that Luis Ramos Nunez was not present at any stage of the conspiracy and or charged counts in the indictment.

That I swear under the pains of perjury that all contained herein are true to the best of my knowledge and belief.

Jose Luis Iglesias

SWORN AND SUBSCRIBED TO BEFORE ME
THE UNDERSIGNED AUTHORITY ON THIS
4th DAY OF AUGUST, 1977.

Duly Authorized Official

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)"
METROPOLITAN CORRECTIONAL CENTER
150 PARK ROW
NEW YORK, NEW YORK 10007

September 30, 1977

Hon. Vincent L. Broderick
Judge
United States District Court
Southern District of New York
Foley Square
New York City, N.Y. 10007

Re: U.S.A.
-vs-
ORLANDO MACHADO,
et al
77CR100

Dear Sir:

This is in reply to the Government's Sentencing Memorandum.

The first fourteen pages of the Government's memorandum is devoted to a compilation of sentences imposed in narcotics cases. I have no way of knowing whether or not there have been other narcotics cases in which lighter sentences were imposed. I do know that any compilation of sentences is irrelevant to the case at bar. It is an individual human being who is being sentenced. He has a totally different background and physical, moral, psychological, mental, spiritual and even physiological history from any and all of the defendants set forth in the above compilation. What he did is also totally different; his motivation and addiction set him apart. His extremely low mental ability certainly is different from those described.

There is little or no precedent used in imposing sentences as every crime and every defendant is different from every other. Of course, judges are guided by the statutes, but they provide wide parameters. Every judge is jealous of the exercise of his independent judgment in deciding these difficult matters. Under these circumstances, it is an imposition verging on effrontery for anyone to formally advise a judge as to what other judges have done. Their judgment was theirs; his judgment will be his. There is no connection. The other defendants' sentences were shaped to fit them; Machado's sentence will be molded to fit him.

Pages 15, 16, 17 and 18 of the Government's Memorandum make no reference to Orlando Machado. In passing, it is interesting to note that the Government wishes to use unproved and untested evidence against the defendants by quoting agents who have not been subject to cross-examination. They are asking this Court to impose a sentence not only for the commission of the crime in the indictment but also an alleged subsequent crime for which they have not been convicted.

In the second paragraph on Page 18 the Government contends that each of the defendants was involved in the sale of narcotics on a tremendous scale. This contention is very seriously mistaken when applied to Orlando Machado. As I recall it, the only evidence against him was that he was a passenger on an airplane just once and that he may have bought from Mr. Cruz on one or two occasions (possibly for his own use). Machado's acts were isolated and he was not employed full-time in it.

As for the last paragraph on Page 18, there is no evidence that Machado ever built a narcotics operation or that his addiction cannot be cured or that he was actively involved in heroin for a substantial period of time. The injury inflicted by a retarded Orlando Machado could not have been a grievous one.

On Page 19 the Government indicates that it is its opinion that incarceration is treated rather lightly by potential prisoners. What the Government doesn't understand is that every minute in jail is like an hour, every hour is like a day and every day becomes a month. The mental and at times physical pain goes on twenty-four hours a day while the human spirit festers and rots. My words may be dramatic but there is no other way to express it. Noone who knows anything at all about what jail is like treats it lightly. Also, parole boards do not parole people when one-third of their sentence has been served, especially in drug cases. Almost all narcotics prisoners are kept for the maximum amount of time that they can be incarcerated. As to another Government claim: the length of incarceration is not perceived as a minimal cost of doing business, especially, by Orlando Machado, who, if he can perceive anything at all, has a deep-rooted fear and abhorrence of the jungles that American prisons are. Again, there is no evidence that Machado was a link of narcotics supply to anyone else, but it is well established that he is an addict who could and did act as a "customer" for himself to satisfy his craving. Far from earning thousands, he made little or nothing from it.

In the first paragraph on Page 20 the Government accuses a mentally retarded, psychiatrically-gutted man of a "massive assault" on the public. In reply, I can only reinterate what the United States Probation Officer Joel Weber has said in his report - "The defendant is isolated, withdrawn, alone" and (at the age of 20) "he was learning to match sounds with words" (as does a first grader). If there was an assault, Machado had a very small part in it. He wouldn't have been allowed a role of importance as he didn't have the capacity of the ordinary human being. He was and still is treated like a particularly inept messenger boy by the other defendants. Towards the end of the jury deliberations, I advised him that we did not want a mistrial, but rather wished this jury to render a verdict as it would be his best chance of acquittal. In a re-trial, there would not have been a mis-identification. This was explained to him in the holding pen next to the courtroom in the presence of other defendants who wanted a mistrial. As I left, I noticed that other defendants were staring at him in a meaningful way. Five minutes later, when he came out to the courtroom, he told me that he wanted a mistrial. He was still the poor "idiot boy" doing the will of others even though it seriously hurt his own chances when he did so.

Orlando Machado was prevented from cooperating by a very real fear for the safety of his wife and two children. A neighbor of his had cooperated not long before the defendant was asked to, and, as a reprisal, his son was murdered soon afterward. The only thing that means anything to Orlando Machado is his family. He could not jeopardize them even if he had had the information which the government wanted. It is easy for the government to make statements as to an individual righting a past wrong by cooperating, but it is too much to ask any man to risk what is more precious to him than life itself.

In the last paragraph on Page 21, the Government appears to indicate that a man should be punished for not cooperating. I suggest that that view is out-of-focus. The core of any sentence is that it be a fitting punishment for this human being at this time - having regard to his total personality with all of its weaknesses and failings. The essence of a sentence has nothing to do with what he did or did not do after his mistake was over and done with.

In the last paragraph in its Memorandum, the Government asks for a maximum sentence. For a man such as Machado that would be a gross injustice. Society does not judge men with serious handicaps in the same way and with the same severity as those more gifted. District Court Judges were given wide latitude in sentencing so that they could exercise leniency where they saw that an individual had become a psychological miasma, his mental faculties were seriously impaired, that he had been totally dominated by the ringleaders of the conspiracy, that his economic and perhaps physical survival depended on doing the will of those not laboring under his unfortunate handicaps, and that his role was a very minor one.

It is strongly recommended that a sentence of one or two years is sufficient for Orlando Machado. We can confidently expect that he will be victimized on a regular basis in prison just as he is on the outside. That brutalization and the fear of it can and will turn his cell into a living hell-hole; the pain of his incarceration will be much more intense then for others. He is too small to fight and too dull to think in the constant strife and tension of today's prisons. I understand that there were several murders in Lewisburg just in the year 1976. There is every probability that the victims were the weak of body and brain similar to Orlando Machado. In every hour of every day in prison, he will be in fear of the other prisoners and that fear will be well-founded. For the punishment involved in every year that another man might serve, Machado will undergo three times as much; each year will be three. I ask that this be considered now in determining the length of his incarceration.

Yours very truly,

S/

JOHN J. BRODERICK

JJB/bar

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O'Rourke Krieger

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 9 day of Feb., ,1978 at No. 1 St. Andrews Pl., NYC

deponent servied the within appendix upon U.S. Atty. So. Dist. of NY

the Appellee herein, by delivering true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
9 day of Feb. 1978

Edward Bailey

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978